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## **Finance Commission**

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## FINANCE COMMISSION OF TEXAS

**MEETING DATE**.....August 20, 2021

**MEETING LOCATION** .....Via Webinar

**CONTACT INFORMATION**.....Phone: (512) 936-6222  
Website: [www.fc.texas.gov](http://www.fc.texas.gov)

**FUTURE MEETING DATES** .....October 15, 2021  
December 17, 2021  
February 18, 2022  
April 15, 2022  
June 17, 2022  
August 19, 2022  
October 21, 2022  
December 16, 2022

*\*\* The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Fin. Code §11.106.*

*Meeting Accessibility. Under the Americans with Disabilities Act, the agency will accommodate special needs. Those requesting auxiliary aids or services should notify the Finance Commission of Texas Administrator several days prior to the meeting using the contact information above by mail, telephone, or email.*

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# FINANCE COMMISSION AGENDA

Friday, August 20, 2021  
9:00 a.m.  
or Upon Adjournment of the Audit Committee Meeting  
Via Webinar

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**Due to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, the August 20, 2021 meeting of the Finance Commission of Texas will be held via webinar/telephonic conference call, as authorized under Texas Government Code section 551.125.**

Members of the public who would like to participate in this meeting will need to register at [www.fc.texas.gov](http://www.fc.texas.gov) or at <https://attendee.gotowebinar.com/register/921596768593458957>. An electronic copy of the agenda is now available at [www.fc.texas.gov](http://www.fc.texas.gov), and a copy of the meeting materials will be available on August 12, 2021 at [www.fc.texas.gov](http://www.fc.texas.gov). To access the recording visit [www.fc.texas.gov](http://www.fc.texas.gov) after August 20, 2021.

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***Section A.3 will take up agenda items A1, B2 and B3 with NO DISCUSSION as notated in bold and italicized.***

*Public comment on any agenda item or issue under the jurisdiction of the Finance Commission of Texas agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.*

## **A. FINANCE COMMISSION MATTERS**

### ***1. Review and Approval of the Minutes of the June 18, 2021 Finance Commission Meeting***

2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Audit Committee Report

#### **A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2021 Third Quarter Investment Officer Reports**

1. Office of Consumer Credit Commissioner
2. Department of Savings and Mortgage Lending
3. Texas Department of Banking

#### **B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:**

1. Office of Consumer Credit Commissioner
2. Department of Savings and Mortgage Lending
3. Texas Department of Banking

#### **C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2021 Third Quarter Financial Statements**

1. Office of Consumer Credit Commissioner
2. Department of Savings and Mortgage Lending
3. Texas Department of Banking

- D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2022 Operating Budgets
  - 1. Office of Consumer Credit Commissioner
  - 2. Department of Savings and Mortgage Lending
  - 3. Texas Department of Banking
- E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2021 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates
- F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's 2021 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates
- 6. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2022 for the Commissioners of the Office of Consumer Credit Commissioner, Department of Savings and Mortgage Lending and the Texas Department of Banking
- 7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending
- 8. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
- 9. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
- 10. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation
- 11. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089

**B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

- 1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
- 2. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, Resulting from Rule Review*
- 3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review*
- 4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, and Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a Repeal in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

*Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas*

### **C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Subchapter B, Concerning Licensing, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Subchapter B, Concerning Licensing, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Concerning Texas Residential Mortgage Loan Companies
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 52, Concerning Department Administration
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of a New Rule and the Repeal of 7 TAC §76.95, Concerning Fee for Special Examination or Audit
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

### **D. TEXAS DEPARTMENT OF BANKING**

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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**NOTE: The Finance Commission of Texas may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.**

**Meeting Accessibility:** Under the Americans with Disabilities Act, the Finance Commission of Texas will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

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# MINUTES OF THE FINANCE COMMISSION MEETING Friday, June 18, 2021

The Finance Commission of Texas convened at 10:13 a.m. on June 18, 2021 with the following members present:

**Finance Commission Members in Attendance** *(some members in attendance via webinar):*

Phillip Holt, Chairman	Will Lucas
George "Cliff" McCauley, Vice Chairman	Sharon McCormick
Robin Armstrong	Vince Puente
Bob Borochoff	Debbie Scanlon
Hector Cerna	Laura Warren
Larry Long	

Commissioner Charles Cooper announced there was a quorum with ten members present. *(1:38 on the audio file)*. Robin Armstrong joined the call at 10:18 a.m. *(5:51 on the audio file)*.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>A. Finance Commission Matters</b>		
1. Review and Approval of the Minutes of the April 16, 2021 Finance Committee Meeting	<b>On Consent Agenda – Item A1</b> This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	2:02 start of discussion
3. Consent Agenda – Items A1 and C2	Laura Warren made a motion to Approve Consent Agenda items A1 and C2. Sharon McCormick seconded and the motion passed.	2:50 start of discussion  3:24 Vote
4. Finance Commission Operations	No Action Required.	3:47 start of discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Reapprove the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2022	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Reapprove the Internal Auditor Contract for Garza/Gonzalez & Associates for Fiscal Year 2022 passed.	4:06 start of discussion  4:27 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2021 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's 2021 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed.	4:45 start of discussion  4:57 Vote
C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Revised Texas Financial Education Endowment (TFEE) Fund Grant Administration & Advisory Policy Manual and 2022-2023 Funding Priorities	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Revised Texas Financial Education Endowment (TFEE) Fund Grant Administration & Advisory Policy Manual and 2022-2023 Funding Priorities passed.	5:13 start of discussion  5:26 Vote
D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Approve an Amount for the Upcoming 2022-2023 Grant Cycle for the Texas Financial Education Endowment (TFEE)	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve \$350,000 for the Upcoming 2022-2023 Grant Cycle for the Texas Financial Education Endowment (TFEE) passed.	7:04 start of discussion  7:15 Vote
6. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	<p>Vince Puente made a motion to approve the following Commission pay adjustments:</p> <ul style="list-style-type: none"> <li>• 4% base salary pay increase for the Banking Commissioner and the Office of Consumer Credit Commissioner effective July 1, 2021.</li> <li>• \$15,000 one-time merit (retention bonus) for the Banking Commissioner and the Office of Consumer Credit Commissioner.</li> <li>• Increase the annual salary of the Finance Commission Executive Director from \$12,000 to \$15,000 effective July 1, 2021.</li> </ul> <p>Laura Warren seconded and the motion passed.</p>	2:08:51 start of discussion
7. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	No Discussion.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
8. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation	No Discussion.	n/a
9. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by Tex. Govt. Code Secs. 551.076 and 551.089	No Discussion.	n/a
<b>B. Office of Consumer Credit Commissioner</b>		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	7:50 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation  <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas</i>	No Discussion.	n/a
<b>C. Texas Department of Banking</b>		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	39:47 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>2. On Consent</b>	<b>On Consent Agenda – Item C2</b> This item Approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
<b>D. Department of Savings and Mortgage Lending</b>		
1. Industry Status and Departmental Operations: a) State Savings Bank Examinations and Supervision Division Activities; b) Mortgage Licensing Division Activities; c) Mortgage Examinations Division Activities; d) Consumer Complaints Division Activities; e) Administration and Finance Division Activities; f) Legal Division Activities, including Gift Reporting; and g) Legislative Activities	No Action Required.	1:15:12 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

Chairman Phillip Holt called for an Executive Session at 12:21 p.m. (2:07:55 on the audio file). The open meeting resumed at 12:51 p.m. (2:08:51 on the audio file).

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 12:52 p.m. (2:10:34 on the audio file).

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Phillip Holt, Chairman  
Finance Commission of Texas

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Charles G. Cooper, Executive Director  
Finance Commission of Texas

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Brenda Medina, Executive Assistant  
Finance Commission of Texas

# Finance Commission of Texas

## **Consent Agenda**

August 20, 2021

### **A. Finance Commission Matters**

1. Review and Approval of the Minutes of the June 18, 2021 Finance Commission Meeting

### **B. Office Of Consumer Credit Commissioner**

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review

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# Office of Consumer Credit Commissioner

## Agency Priorities

FY 2022

### 1. LEGISLATIVE

#### 1.1. Legislative Interim Studies.

**1.1.1. Objective:** Participate in legislative interim studies and provide information and research to the Texas Legislature.

**Measure:** Respond promptly to legislative requests for information. Communicate with the Finance Commission regarding interim legislative activity.

### 2. REGULATORY ACTIVITIES

#### 2.1. Regulated Entities - Supervision.

**2.1.1. Objective:** Supervise and monitor the jurisdictionally appropriate industry segments for compliance with state and federal law. Investigate illegal activity. Take appropriate enforcement actions to ensure compliance with state and federal law.

**Measure:** Reporting on compliance by regulated industry segment and enforcement actions.

**2.1.2. Objective:** Achieve overall weighted average acceptable level of compliance of 85% through examinations and industry education efforts. Monitor follow-up and restitution orders for licensees with outstanding examination issues.

**Measure:** Number of examinations completed. Report the rate of satisfactory compliance. Report the amount of restitution returned to consumers as a result of examinations.

**2.1.3. Objective:** Actively engage in regulatory activities and supervisory issues relating to consumer finance, auto finance, and payday lending at the national and multistate level.

**Measure:** Maintain active contact with other state and federal regulators, independently and through regulatory associations to keep abreast of trends and emerging issues that may impact the OCC's regulatory responsibilities or the regulated industries. Engage in and respond as appropriate to developing issues that impact the OCC or its regulated entities.

**2.1.4. Objective:** Implement Networked Supervision Program by developing processes for using the State Examination System (SES) and participating in auto and mortgage multistate exams.

**Measure:** Report on the number of auto finance and mortgage exams that examiners participated in and the number of examinations conducted through SES.

## **2.2. Licensing.**

**2.2.1. Objective:** Process 85% of license applications within 60 days from received date to completion date. Provide professional development and training opportunities to licensing staff once per quarter.

**Measure:** Report on license activities, benchmarks, application processing status, and departmental professional development.

## **3. POLICY AND RULE DEVELOPMENT**

### **3.1. Rulemaking.**

**3.1.1. Objective:** Complete rule reviews for the following rule chapters: 7 TAC Chapter 83, Subchapter A (relating to regulated lenders) and Chapter 88 (relating to debt management service providers). Work with stakeholders to clarify and improve rules.

**Measure:** Present rules to the Finance Commission for readoption according to schedule. Propose appropriate rule amendments to the Finance Commission. Request feedback from stakeholders on whether rules should be updated, and conduct webinars on proposed rule amendments.

**3.1.2. Objective:** Prepare any rule proposals necessary to implement 2021 legislation. Work with stakeholders to seek feedback on proposed rules.

**Measure:** Present rules to the Finance Commission for proposal and adoption. Request feedback from stakeholders and conduct webinars on proposed rules.

## **4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES**

### **4.1 Texas Financial Education Endowment Fund (TFEE).**

**4.1.1. Objective:** Conclude the TFEE 2021-2022 grant cycle, including monitoring the completion of award recipient's grant cycles, reporting on grant award program progress, and processing reimbursement requests. Begin the TFEE 2022-2023 grant cycle, including selecting award recipients, monitoring grant award recipients, reporting on grant award program progress, and processing reimbursement requests.

**Measure:** Reporting on fund activities, investment earnings, grant request submissions, grants awarded, and grantee reporting highlights. Identify and implement ways in which to improve and expand the grant program based on report findings and program needs.

### **4.2 Financial Education**



- 4.2.1. Objective:** Identify underserved populations and locations in need of financial education. Provide and support financial education to new demographics of consumers by collaborating with community organizations, state agencies, non-profit organizations, and consumer advocacy groups. Continue to collaborate with the Department of Banking in the promotion and delivery of financial education. Further expand financial education content by remote learning and webinar techniques.

**Measure:** Report on number of people and programs reached.

#### **4.3. Industry and Stakeholder Outreach**

- 4.3.1. Objective:** Continue to build relationships with industry and interested stakeholders to ensure clear communications on education or regulatory compliance. Monitor emerging issues in agency's areas of regulation and communicate the impact to regulated and licensed entities. Develop publications that address topics of interest and share with regulated and licensed entities. Participate in or attend industry meetings or seminars.

**Measure:** Report to the Finance Commission on the content and frequency of communications.

### **5. AGENCY MANAGEMENT**

#### **5.1. Performance Measures.**

- 5.1.1. Objective:** Performance Targets. Meet or exceed 80% of key performance targets within  $\pm 5\%$  of the projected target.

**Measure:** Continue to meet or exceed the strategic planning goals for key performance measures, including attainment of at least 9 out of 11 key performance targets. Report results to Finance Commission on a quarterly basis.

#### **5.2. Human Resources.**

- 5.2.1. Objective:** Recruit and retain qualified personnel with the appropriate skill set necessary to meet short and long-term needs. Continue efforts to right size staffing, based on performance requirements, with an emphasis on employee retention and diversity. Ensure staff receives adequate cross-training to minimize institutional knowledge loss due to work separation or retirement. Maintain competitive compensation schedules. Continue efforts to be proactive in competitive salary administration.

**Measure:** Report on turnover ratio, cross-training initiatives and retention efforts. Maintain competitive financial examiners career development and progression path.

- 5.2.2. Objective:** Promote opportunities for staff professional development. Ensure that examiners and investigators receive a minimum of 40 hours of continuing education. Ensure that at least 40% of administrative staff receives additional professional or job-related training.

**Measure:** Reporting on training opportunities and attainment of minimum exam staff training and administrative staff training.

**5.2.3. Objective:** Conduct review of Human Resources policies and update as appropriate. Enhance supervisory resources and training.

**Measure:** Report on completion of review and progress on supervisor resources.

### **5.3. Financial and Self-Directed, Semi-Independent Status.**

**5.3.1. Objective:** Ensure that the agency's revenues and expenditures are appropriate and balanced and maintain a cash reserve or fund balance in compliance with Finance Commission policies. Provide greater data reliability, more efficient transactional processing, and enhanced reporting.

**Measure:** Review internal financial statements and variances on a monthly basis. Submit quarterly financial data relating to the agency's financial position and fund balance for review by the Finance Commission.

**5.3.2 Objective:** Continue to work towards a long term solution, in collaboration with the other Commission agencies, to address headquarter facilities space and parking needs.

**Measure:** Report on activities related to the relocation of the Finance Commission agencies.

### **5.4. Information Technology.**

**5.4.1. Objective: CAPPS Financial & HR Migration.** Complete OCCC migration to CPA's CAPPS (Centralized Accounting and Payroll/Personnel System) Financial system and undertake subsequent introduction of CAPPS HR system.

**Measure:** Successful, on-time transitions to Financial and HR systems.

**5.4.2 Objective: Remote Access Security Improvements.** Improve remote access security posture by introduction of new utility, coordinated under a DIR program.

**Measure:** Activation and successful deployment of utility.

**5.4.3 Objective: Cloud Backup and Dark Capacity.** Improve continuity of operations by conversion of OCCC backup procedures to DIR's cloud services, and contract to using the Dark Capacity server recovery service. These are separate services which both improve the agency's posture for potential disaster recovery.

**Measure:** Commencement and completion of the initial data copy and subsequent updates.

**5.4.4 Objective: Web-based TPE Payment Page for Non-ALECS Transactions.** Update OCCC's payment options by introducing a payment webpage for digital transactions outside the scope of ALECS, executed through NIC's Transaction Processing Engine.

**Measure:** Progress on project implementation and reporting of revenue streamed through the webpage.

**5.4.5 Objective: ALECS Enhancements.** Continuing improvements to ALECS, including operations related to recent legislative requirements for Crafted Precious Metal Dealers (CPMD).

**Measure:** Deployment of CPMD functionality as defined and on time.

**FY 22 Performance Measures**  
**Office of Consumer Credit Commissioner**

**FY 22 Target**    **FY 21 Target**

**Consumer Protection:**

Outcome Measures (Annual)

Key	Monies returned to consumers	\$12,500,000	2,500,000
Key	Percentage of written complaints closed within 90 days <sup>1</sup>	85%	85%
Key	Percentage of examinations reporting acceptable level of compliance <sup>2</sup>	85%	85%
	Percentage of licensed locations and registered offices examined annually	18%	15%
	Percentage of repeat referrals for enforcement action	25%	13%
	Percentage of enforcement actions closed within targeted timeframe	75%	70%

Output Measures (Quarterly)

Key	Number of complaints closed <sup>1</sup>	1,750	1,750
Key	Number of examinations completed <sup>1</sup>	3,000	2,500
	Number of investigations completed	75	55
	Number of enforcement actions taken	250	275
	Number of contested cases heard at SOAH	2	5
	Number of compliance aids and tools published	45	45
	Number of industry stakeholder and outreach events hosted or attended by OCC staff	30	30

Efficiency Measures (Annual)

	Average number of days for all complaints to reach final disposition	60	60
	Average number of days to close a complaint	45	45
	Average cost per complaint <sup>2</sup>	\$180	\$180
	Average cost per examination	\$1,650	\$1,725
Key	Average number of days to close an enforcement action	100	100

**Effective Licensing & Registration:**

Outcome Measures (Annual)

Key	Percentage of business license applications processed within 60 days	85%	90%
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Output Measures (Quarterly)

Key	Number of business applications processed <sup>1</sup>	1800	1750
	Number of pawnshop employee license applications processed	475	600
	Number of residential mortgage loan originator licenses processed <sup>1</sup>	100	60

Efficiency Measures (Annual)

Key	Average processing time (days) for business license applications	45	45
	Average processing time (days) for pawnshop employee applications	30	30
	Average processing time (days) for residential mortgage loan originators	15	15

**Efficient and Effective Agency Operation:**

Outcome Measures (Annual)

Key	Percentage of regular employees separated from the agency <sup>1</sup>	16%	16%
	Percentage of public information requests addressed within 5 business days	80%	80%
	Percentage of actual expenditures to budgeted expenditures <sup>1</sup>	95%	95%

Output Measures (Quarterly)

	Number of public information requests closed	185	185
	Number of public information requests withdrawn	8	10

Efficiency Measures (Annual)

	Average number of days to address a public information request	2.2	2.6
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Explanatory Measures (Annual)

	Number of public information requests received	193	200
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**Financial Education:**

Output Measures (Quarterly)

Key	Number of people receiving direct educational services	900	775
	Percentage of TFEF award recipients who reached their consumer participation goal within the grant period	100	100

<sup>1</sup> These measures are comparable to similar measures with the Departments of Banking and Savings and Mortgage Lending

<sup>2</sup> These measures are comparable to similar measures with the Department of Savings and Mortgage Lending



## Agency Priorities for Fiscal Year 2022

### I. Legislative

I.1 **Objective:** Monitor Interim Charges that may affect the Department or its regulated industries.

**Measure:** Provide regular updates to the Finance Commission regarding interim legislative activities.

I.2 **Objective:** Monitor federal legislation and regulations that may affect the Department or its regulated entities.

**Measure:** Communicate relevant information with the Finance Commission and industries, as necessary.

### II. Regulatory

II.1 **Objective:** Continue to monitor closely the Department's savings banks' risk profiles and the economic conditions in which they operate. Continue ongoing monitoring of both individual and systemic conditions that present risks to their financial security through the Department's off-site financial information software and onsite presence

**Measure:** Maintain off-site monitoring program of savings banks while initiating appropriate regulatory responses and enforcement actions when applicable. Maintain state savings bank examination schedule as set by Department policy.

II.2 **Objective:** Continue compliance examinations of mortgage companies and Residential Mortgage Loan Originators, licensed under Finance Code, Chapters 156, 157, and 159 respectively; to ensure that licensees comply with applicable laws and regulations when conducting business with Texas consumers. Analyze recurring examination findings and take steps to communicate best practices to the mortgage industry.

**Measure:** Maintain mortgage examination schedule, as set by Department policy, and as needed initiate appropriate regulatory responses and enforcement actions for violations found.

II.3 **Objective:** Initiate appropriate regulatory enforcement to ensure compliance with federal and state laws and regulations.

**Measure:** Report on enforcement actions.

II.4 **Objective:** Retain prompt resolution times on consumer complaints.

**Measure:**

- a. Provide updates to the Finance Commission on the aging of complaints.
- b. Conduct management review of any complaints open over 120 days to identify issues preventing the timely closing of such complaints.
- c. Conduct consumer complaint surveys on a regular basis.

II.5 **Objective:** Process complete licensing applications and registrations in a timely manner.

# DEPARTMENT OF **SAVINGS AND MORTGAGE LENDING**

**Measure:**

- a. Monitor the timeliness of licensing process.
- b. Conduct survey of license applicants on a regular basis.

**II.6 Objective:** Participate in the development and implementation of home equity interpretations.

**Measure:**

- a. Continued involvement in meetings of the Home Equity Lending Working Group as it develops recommended home equity rules and interpretations.
- b. Implement any rule and interpretations adopted by the Finance Commission and the Credit Union Commission.

**II.7 Objective:** Remain active and involved at the national level on supervisory issues affecting savings banks and the mortgage industry.

**Measure:**

- a. Maintain contact with state regulators from other states, regulatory associations (e.g. ACSSS, CSBS, and AARMR), trade associations, (e.g. TBA, IBAT, TMBA, ATMP, TLTA, and TAR), and federal regulators (e.g. CFPB, FDIC, FRB), in order to be aware of events, decisions, other state and federal policies and other areas of actual and potential impact on the Department's regulatory functions or the industries. Take proactive steps to respond as issues arise affecting the industries or supervisory duties.
- b. Continue working with the FDIC and FRB, and other federal agencies as appropriate, on examinations, supervision, and consumer complaint resolution issues. Monitor federal rule writing activity and interpretations of existing statutes.
- c. Report to the Finance Commission on interaction with federal agencies in all of the above listed activities.

**II.8 Objective:** Establish, administer, and maintain a Mortgage Grant Fund as required by Subchapter G of the Chapter 156 of the Texas Finance Code.

**Measure:**

- a. Develop and create a Mortgage Grant Administration Manual that establishes the policies and procedures for governing the administration of the fund and the issuance of any grant funds.
- b. Appoint a Grant Coordinator to assist the Commissioner in discharging his or her duties related to the Mortgage Grant Fund.
- c. Establish a Mortgage Grant Advisory Committee to serve in an advisory role and make program recommendations to the Commissioner and Grant Coordinator regarding the administration of the fund and the award of grant(s) from the Mortgage Grant Fund.
- d. Provide periodic reports to the Finance Commission on the creation, development, and implementation of the Mortgage Grant Fund.

**II.9 Objective:** Develop and implement policies and procedures for the examination or inspection of wrap lenders registered under Chapter 159 of the Texas Finance Code.

**Measure:**

- a. Develop examination policies and procedures for the examination or inspection of wrap lenders.
- b. Provide training to Financial Examiners regarding the new examination policies and procedures for the examination or inspection of wrap lenders.

# DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

## **III. Policy and Rule Development**

**III.1 Objective:** Conduct rule review of all rules related to mortgage licensing. Propose necessary amendments to the rules as necessary.

**Measure:** Have final action taken, either readoption or repeal, on the rule review and proposal of any amendments needed to these rules.

**III.2 Objective:** Monitor and modify Texas Administrative Code rules as necessary to reflect changes in state and federal laws and address the dynamics of the changing industries.

**Measure:** Amend rules and adopt new rules as necessary to implement necessary changes timely.

**III.3 Objective:** Propose rules necessary to implement enacted bills that impact the Department or the industries.

**Measure:** Amend rules and adopt new rules as necessary to implement necessary changes timely.

## **IV. Industry Outreach and Communication**

**IV.1 Objective:** Communicate with regulated industries on matters of supervisory and industry interest, including emerging issues, through a variety of means both virtual and in person as deemed appropriate and efficient.

**Measure:** Provide regular updates to the Finance Commission regarding activities conducted in these areas by reporting the number of communications sent and events participated in.

## **V. Agency Operations**

**V.1 Objective:** Recruit well qualified personnel, while seeking to broaden the Department's workforce diversity. Train and cross-train employees as needed to minimize knowledge loss due to employee departure and to prepare for business needs due to changes in regulated industries and/or technology. Provide and promote opportunities for professional development through individual training plans.

**Measure:** Report on staffing activity, actions to retain staff, and turnover ratios to the Finance Commission.

**V.2 Objective:** Meet or exceed 90% of the key performance measures within the Department's control. Strive to reduce deficiencies, if any, in the performance measures outside the Department's control. (See Attachment A for all Performance Measures)

**Measure:** Provide regular updates to the Finance Commission regarding performance measures.

**V.3 Objective:** Implement improvements in business processes and internal controls in response to evolving business needs, audit recommendations, and/or internal reviews.

**Measure:** Report on outcome of audits and implementation progress to Finance Commission Audit Committee.

**V.4 Objective:** Monitor the Department's budgeted and actual revenues, expenditures, and reserve balances, as approved by the Finance Commission, in order to maximize the responsiveness and flexibility

## DEPARTMENT OF **SAVINGS AND MORTGAGE LENDING**

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allowed by the Department's Self-Directed Semi-Independent status. Make decisions relating to finances in a fiscally prudent manner.

**Measure:** Report to the Finance Commission Audit Committee on revenue and expenditure variances to the budget at least quarterly.

**V.5 Objective:** Ensure information technology is kept current to maintain effectiveness and quality of work product of the Department. Safeguard the integrity of data and information technology networks and systems.

**Measure:** Report to the Finance Commission activities in this area.

**V.6 Objective:** Deploy the Centralized Accounting and Payroll/Personnel System (CAPPS) Financials' Core Modules: Asset Management, Accounts Payable, General Ledger, and Purchasing. Prepare for the deployment of the CAPPS Human Resources/Payroll Modules, scheduled for September 1, 2022.

**Measure:** Provide necessary information and documentation, perform tasks, and participate in onboarding and deployment activities, as required by Comptroller of Public Account's CAPPS Teams and according to the Interagency Cooperation Contract for CAPPS Services between the Texas Comptroller of Public Account and the Department of Savings and Mortgage Lending.

**V.7 Objective:** Monitor emergencies, natural disasters, or pandemics as they relate to the Department or its regulated industries.

**Measure:** Report to the Finance Commission activities in this area.

**V.8 Objective:** Continue to evaluate headquarters space and parking needs in collaboration with the other Finance Commission agencies.

**Measure:** Report to the Finance Commission activities related to the relocation of the agencies.



**Department of Savings and Mortgage Lending  
FY22 Performance Measures**

			<b>FY22 Target</b>	<b>FY21 Target</b>
<b>01-01 Thrift Safety and Soundness</b>				
	<b>Outcome Measures (Annual)</b>			
<b>Key</b>	01	Percentage of State Chartered Savings Institutions Receiving Examination within the Required Timeframes <sup>1</sup>	100%	100%
<b>Key</b>	02	Percentage of Savings Institutions Classified Safe and Sound <sup>1</sup>	90%	90%
<b>Non-Key</b>	04	Percentage of State Chartered Savings Institution Applications Processed within Statutory Timeframes <sup>1</sup>	100%	100%
	<b>Output Measures (Quarterly)</b>			
<b>Key</b>	01	Number of State Chartered Savings Institution Examinations Performed <sup>1</sup>	21	16
<b>Non-Key</b>	04	Number of State Chartered Savings Institution Applications Processed. <sup>2</sup>	15	10
	<b>Efficiency Measures (Annual)</b>			
<b>Non-Key</b>	01	Assets Examined Per Examiner Day (in Millions)	\$213.9	\$92.0
<b>Non-Key</b>	02	Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	7
	<b>Explanatory Measure (Annual)</b>			
<b>Key</b>	01	Number of State-Chartered Savings Institutions	24	23
<b>Key</b>	02	Dollar Amount of Assets under Regulation (in Billions)	\$456.0	\$325.5
<b>02-01 Mortgage Regulation</b>				
	<b>Outcome Measures (Annual)</b>			
<b>Key</b>	01	Percentage of Satisfactory Levels of Compliance Reported Through Examination <sup>3</sup>	90%	90%
	<b>Output Measures (Quarterly)</b>			
<b>Key</b>	01	Number of Applications Processed <sup>2</sup>	18,000	8,600
<b>Key</b>	02	Number of Licensees Examined <sup>2</sup>	14,000	5,900
	<b>Efficiency Measures (Annual)</b>			
<b>Non-Key</b>	01	Average Cost Per Application Processed	\$57	\$55
	<b>Explanatory Measures (Annual)</b>			
<b>Non-Key</b>	01	Total Number of Licensees in an Approved Status	55,000	38,000
<b>03-01 Consumer Responsiveness</b>				
	<b>Outcome Measures (Annual)</b>			
<b>Key</b>	01	Percent of Complaints Closed within Ten Business Days of Receipt of Complete Information	99%	99%
<b>Key</b>	02	Percentage of Written Complaints Closed within 90 Days <sup>2</sup>	95%	95%
	<b>Output Measures (Quarterly)</b>			
<b>Non-Key</b>	01	Number of Complaints Closed <sup>2</sup>	1,300	1,000
	<b>Efficiency Measures (Annual)</b>			
<b>Non-Key</b>	01	Average Cost Per Complaint Closed <sup>3</sup>	\$435	\$400
<b>04-01 Agency Administration</b>				
	<b>Outcome Measures (Annual)</b>			
<b>Key</b>	01	Percentage of Employees Separated from the Agency <sup>2</sup>	10%	10%
<b>Key</b>	02	Percentage of Actual Expenditures to Budgeted Expenditures <sup>2</sup>	95%	95%

<sup>1</sup> These measures are comparable to similar measures with the Department of Banking

<sup>2</sup> These measures are comparable to similar measures with the Department of Banking and Office of Consumer Credit Commissioner

<sup>3</sup> These measures are comparable to similar measures with the Office of Consumer Credit Commissioner

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Charles G. Cooper  
Commissioner

## ***TEXAS DEPARTMENT OF BANKING***

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### **M E M O R A N D U M**

TO: The Finance Commission of Texas

FROM: Charles G. Cooper, Commissioner

DATE: August 4, 2021

RE: Department of Banking Priorities for Fiscal Year 2022

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#### **I. LEGISLATIVE – *State and National Legislative Issues***

- I.1 **Objective:** Provide appropriate and comprehensive resource material as requested in a timely manner.

**Measure:** To the extent legally permissible, respond accurately and timely to all requests for resource information. Maintain contact with legislative committee chairs and staff. Testify at interim charge hearings as requested.

- I.2 **Objective:** Maintain accurate, timely, and complete communication with Finance Commission members about significant conditions, trends, and significant events in the industries the agency supervises.

**Measure:** Notify Finance Commission members of significant federal laws and policy statements and how supervised entities may be affected. Provide sufficient information and materials to give members an overall assessment of our regulated industries.

- I.3 **Objective:** Monitor legislative interim charges that may affect the Department or its regulated entities. Implement legislative changes from the 87th legislative session that affect the agency.

**Measure:** Assist legislative committees with interim charges, if requested. Provide technical assistance and comprehensive resource materials when requested. Implement legislation that directly affects the Department or the industries we regulate by updating or creating rules, policies or procedures.

#### **II. REGULATORY ACTIVITIES – *Examination Activity and Enforcement Actions***

- II.1 **Objective:** Efficiently structure the agency to meet performance measures. Ensure performance goals are a true evaluation of major functions of the Department (See Attachment A for all performance measures).

**Measure:** Meet or exceed the strategic planning goals for performance measures. Maintain banking and money services business accreditation from CSBS. Report performance measure results to the Finance Commission quarterly.

- II.2 **Objective:** Remain active and involved at the national level in supervisory issues affecting banking, money services business activities, trust services and other areas of direct supervisory oversight in Texas.

**Measure:** Maintain active contact with other states individually and through regulatory associations (CSBS and MTRA), trade associations (IBAT and TBA) and frequent contact with federal regulators to be aware of events, decisions, other state and federal policies, and other areas of actual or potential impact to the Department's regulatory functions or the industry. Participate in the networked supervision and examination of MSBs licensed in multi-states. Take proactive steps to respond as issues arise affecting the industries or our supervisory duties.

- II.3 **Objective:** Maintain an ongoing awareness of our bank and trust entities' risk profiles and the condition of the economy in which they operate. Monitor individual or systemic conditions, including the continuing economic effects of the COVID-19 pandemic, cybersecurity threats and other high-risk activities which present risks to their financial stability. Ensure that supervisory activities remain appropriate and take necessary actions against institutions exhibiting unacceptable risk profiles.

**Measure:** Perform research, maintain ongoing dialogue with other regulators, and attend training to maintain an understanding of conditions in which our entities operate. Maintain a leading role in the effort to combat cybersecurity threats. Maintain an off-site monitoring program of bank and trust industries while initiating appropriate regulatory responses and actions when applicable. Research and take required actions against institutions with unacceptable risk profiles to minimize the adverse impact on depositors, shareholders, and the banking system in general. Maintain a current bank watch list reflecting entities with a heightened risk of becoming a problem bank.

- II.4 **Objective:** Monitor emerging issues in our areas of regulation. Determine and communicate the impact of these issues to the regulated entities.

**Measure:** Report on emerging issues to the Finance Commission and regulated entities. Provide publications that address topics of interest. Participate in industry meetings, seminars, committees and working groups. Continue to be involved in speaking opportunities with regulated industries to provide updates relating to ongoing supervisory issues.

- II.5 **Objective:** Monitor areas/industries we regulate for illegal activity.

**Measure:** Monitor for and investigate potential illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against licensed and/or unlicensed entities to ensure compliance with applicable statutes and rules to protect the rights and interests of consumers and applicable industries. Refer cases as needed to local, state, or federal law enforcement agencies or the Texas Attorney General.

- II.6 **Objective:** Process consumer complaints/inquiries professionally, appropriately, and timely.

**Measure:** Report complaints/inquiries activity at each Finance Commission meeting. Meet or exceed the strategic planning goals for consumer activity performance measures.

- II.7 **Objective:** Continue to develop and refine examination procedures, reference materials, and internal guidance to enhance the examination process.

**Measure:** Monitor regulatory changes and update examination materials and guidance in a timely manner. Continue to perform internal reviews of examination procedures to ensure proper intent and applicability. Timely and regularly communicate updates/changes to examiners. Refine examination procedures and processes in response to changing COVID-19 conditions.

### III. POLICY AND RULE DEVELOPMENT – *Policies, Rules and Financial Education Activities*

- III.1 **Objective:** Issue formal communications to regulated entities to clarify and/or promote best practices to assist in complying with laws and policy statements.

**Measure:** Issue Supervisory Memorandums, Regulatory Guidance, and Legal Opinions in a timely manner as needed.

- III.2 **Objective:** Monitor and suggest amendments to the Texas Administrative Code as necessary to reflect changes in state and federal laws, clarify existing laws, and address the dynamics of the changing industries. Perform periodic reviews of fee rules to ensure each regulated area covers its cost of regulation.

**Measure:** Draft amendments and new rules for potential adoption by the Finance Commission as necessary to timely effect necessary changes. Conduct reviews of all rules every four years to evaluate their continued necessity and applicability.

- III.3 **Objective:** Maintain participation in financial education and outreach efforts.

**Measure:** Periodically update the Department's financial education web pages and brochure. Highlight financial institutions with active programs in agency publications. Participate in financial education events and webinars throughout the year.

### IV. AGENCY MANAGEMENT – *Staffing, Recruiting, Fiscal Responsibility, and Technology*

- IV.1 **Objective:** Actively recruit qualified personnel while strengthening the diversity of the workforce whenever possible. Maintain compliance with all state and federal employment laws.

**Measure:** Actively recruit entry level positions at state universities and colleges by attending job fair events (if available) and supporting banking programs at Texas universities. Utilize recruiting platforms that reach a wide talent pool. Promptly post vacancies. Periodically review and update personnel policies and procedures with changes due to the 87th legislative session.

- IV.2 **Objective:** Work towards full staffing, with an emphasis on employee retention and staff diversity. Promote junior staff involvement in new responsibilities to enable seamless transition into senior staff positions as vacancies and retirements occur. Continue efforts to maintain a competitive salary structure. Obtain feedback from employees and implement changes where feasible.

**Measure:** Continue to improve examination staff retention by addressing major issues that contribute to non-retirement resignations, with a goal to have the agency turnover rate (excluding retirements and intern separations) not exceed 9% for the fiscal year. Maintain a competitive examiner salary program compared to the FDIC by striving to be at a 95% equivalency. Implement, when feasible, recommendations of the Employee Advisory Council.

- IV.3 **Objective:** Transition to the Centralized Accounting Payroll/Personnel System (CAPPS) HR/Payroll.

**Measure:** Report on activities related to CAPPS HR/Payroll transition and implementation.

- IV.4 **Objective:** Maintain up-to-date computer hardware and software to enhance the effectiveness, speed and quality of the work products that are compatible with our federal counterparts. Provide timely technical support and training to staff.

**Measure:** Provide technology tools necessary for staff to perform their job functions efficiently, effectively, and securely. Where appropriate, provide technology solutions that support Department-wide remote work in accordance with agency determined limitations. Maintain software currency in accordance with the Department of Information Resources guidelines. Ensure network, website, and databases function appropriately and without prolonged downtimes.

- IV.5 **Objective:** Safeguard the integrity of data and information technology networks and systems from unauthorized access or use, ensuring that access to critical systems are available during an emergency to staff.

**Measure:** Perform an annual external or internal information security risk assessment and initiate corrective actions to maintain data integrity and minimize the risk of unauthorized access or use. Continue periodic intrusion testing by the Department of Information Resources for both the network and external facing web resources. Conduct an annual test of the Department's disaster recovery plan and initiate corrective actions to ensure operations will function appropriately. Execute quarterly information security tabletop exercises to ensure staff are ready to respond to various incident types, when and if they occur.

- IV.6 **Objective:** Ensure financial examiners receive adequate and proper training to perform their duties and progress within the financial examiner series.

**Measure:** Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Adequately prepare assistant examiners to successfully complete the Bank and Trust Supervision

commissioning test. Continue agency efforts to provide continuing education to field examiners.

- IV.7 **Objective:** Ensure agency expenditures are necessary and prudent and within budgetary constraints; revenues collected are adequate to cover expenditures; and provide a cash reserve or fund balance that complies with Finance Commission policies.

**Measure:** Review expenditure and revenue patterns monthly. Prepare quarterly financial statements to substantiate the agency's financial position and cash reserve.

- IV.8 **Objective:** Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency.

**Measure:** Report on improvements identified and implemented.

- IV.9 **Objective:** Continue to explore options for physical relocation of the Finance Commission agencies that meets the needs of all three agencies.

**Measure:** Report on activities related to the relocation of the Finance Commission agencies.

- IV.10 **Objective:** Comply with the directives of the State Office of Risk Management (SORM) regarding the Continuity of Operations Plan.

**Measure:** Ensure that updates are made, and the Plan is exercised as determined by SORM.

The Department of Banking is considered by our regulatory peers to be one of the top financial regulators in the country. We have worked hard to achieve this position and will continue to improve our processes and techniques to properly supervise the industries that we regulate and serve the citizens of Texas.

## Performance Measures for 2022

### Department of Banking

#### Bank and Trust:

##### K Outcome Measures (Annual)

K	01-01.01	Percentage of Banks Receiving Examinations Within Required Timeframes <sup>1</sup>
	01-01.02	Percentage of Foreign Bank Organizations Receiving Examinations Within Required Timeframes
	01-01.03	Percentage of Trust Companies Receiving Examinations Within Required Timeframes
	01-01.04	Percentage of Problem Institutions with Appropriate Supervisory Actions in Place
	01-01.05	Certificate of Accreditation by CSBS Maintained in Good Standing

Target 2022	Target 2021
95.00%	95.00%
100.00%	70.00%
95.00%	85.00%
100.00%	100.00%
YES	YES

##### K Output Measures (Quarterly)

K	01-01.06	Number of Bank Examinations Performed <sup>1</sup>
K	01-01.07	# Foreign Bank Organization, Trust Co, Trust Dept, & IT Exams and Other Specialized Reviews Performed

94	89
230	197

##### Efficiency Measures (Annual)

	01-01.08	Average Cost Per Bank Examination
		Average Cost Per Bank Examination
	01-01.09	Assets Examined Per Examiner Day (in millions)
		Assets Examined Per Examiner Day (in millions)

\$91,330.00	\$98,380.00
\$11.60	\$10.95

##### K Explanatory Measure (Annual)

K	01-01.10	Percentage of Banks Classified Safe and Sound <sup>1</sup>
	01-01.11	Number of Texas State-Chartered Banks
	01-01.12	Total Assets in Texas State-Chartered Banks (in Billions)

95.00%	95.00%
212	207
\$426.10	\$319.60

#### Non-Depository Supervision (NDS):

##### K Outcome Measures (Annual)

K	01-02.01	Percentage of Money Services Business Licensees Examined By NDS Within Required Timeframes
K	01-02.02	Percentage of Prepaid Funeral Contract Licensees Examined By NDS Within Required Timeframes
K	01-02.03	Percentage of Perpetual Care Cemetery Licensees Examined By NDS Within Required Timeframes
	01-02.04	Percentage of PCC and PFC Applications Processed within Statutory Period

90.00%	90.00%
95.00%	95.00%
95.00%	95.00%
95.00%	95.00%

##### K Output Measures (Quarterly)

K	01-02.05	Number of NDS Licensees Examined <sup>2</sup>
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520	550
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##### Efficiency Measures (Annual)

	01-02.06	Average Direct Cost Per Prepaid Funeral Contract and Perpetual Care Cemetery Licensee Examination.
	01-02.07	Average Direct Cost Per Money Services Business Licensee Examination

\$2,750	\$2,750
\$11,000	\$9,500

##### Explanatory Measures (Annual)

	01-02.08	Dollar Amount of Prepaid Funeral Contracts in Force (in Billions)
	01-02.09	Number of NDS Licensees
	01-02.10	Percentage of NDS Licensees Classified Safe and Sound

\$4.5	\$4.3
775	760
95.00%	95.00%

#### Application Processing:

##### K Outcome Measures (Annual)

K	01-03.01	Percentage of Applications and Notices for Banks, Trust Companies, Money Service Businesses, and Check Verification Companies Processed within Statutory Time Periods <sup>1</sup>
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95.00%	95.00%
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##### K Output Measures (Quarterly)

K	01-03.02	Number of Applications and Notices Processed for Banks, Trust Companies, Money Service Businesses, and Check Verification Companies <sup>2</sup>
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324	298
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##### K Outcome Measures (Annual)

K	01-04.01	Percentage of Written Complaints Closed Within 90 Days <sup>2</sup>
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100.00%	100.00%
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##### Output Measures (Quarterly)

	01-04.02	Number of Written Complaints Closed <sup>2</sup>
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225	225
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#### Regulatory Oversight: (Finance Commission) (Reported Internally)

##### Output Measures (Quarterly)

	01-04.03	Number of Meetings Convened
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6.0	6.0
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#### Operational Efficiency:

##### K Outcome Measures (Annual)

K	01-05.01	Percentage of Regular Employees Separated from the Agency <sup>2</sup>
	01-05.02	Percentage of Regular Employees Separated from the Agency (Excluding Retirements)
K	01-05.03	Percentage of Actual Expenditures to Budgeted Expenditures <sup>2</sup>

11.00%	11.00%
9.00%	9.00%
95.00%	95.00%

<sup>1</sup> These measures are comparable to similar measures with the Department of Savings and Mortgage Lending

<sup>2</sup> These measures are comparable to similar measures with the Department of Savings and Mortgage Lending and Office of Consumer Credit Commissioner



**A. FINANCE COMMISSION MATTERS**

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending

**PURPOSE:** The purpose of the amendments to 7 TAC Chapter 153 is to implement changes relating to electronic disclosures and out-of-state financial institutions.

**RECOMMENDED ACTION:** The Joint Financial Regulatory Agencies request that the Finance Commission approve the amendments to 7 TAC Chapter 153 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment the amendments in 7 TAC Chapter 153.

*Title 7. Banking and Securities*  
*Part 8. Joint Financial Regulatory Agencies*  
*Chapter 153. Home Equity Lending*

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.1 (relating to Definitions), §153.5 (relating to Two Percent Fee Limitation: Section 50(a)(6)(E)), §153.12 (relating to Closing Date: Section 50(a)(6)(M)(i)), §153.13 (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), §153.17 (relating to Authorized Lenders: Section 50(a)(6)(P)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)), §153.45 (relating to Refinance of an Equity Loan: Section 50(f)), and §153.51 (Consumer Disclosure: Section 50(g)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the proposed rule changes to 7 TAC Chapter 153 are: (1) to specify requirements for electronic disclosures, and (2) to describe Section 50's applicability to out-of-state financial institutions.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the

proposed changes. The agencies received one informal precomment on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §153.1 add definitions and statutory citations for the terms "E-Sign Act" (referring to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006) and "UETA" (referring to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322). The terms "E-Sign Act" and "UETA" provide a concise way to refer to these two statutes, and are used throughout this proposal in connection with electronic disclosures. Proposed amendments throughout §153.1 would also renumber other definitions accordingly.

Proposed amendments to §153.5 would revise the title to this section to conform to letter case conventions used in other rules. In addition, citations to the definition of "interest" in §153.1 would be updated to reflect the renumbering described in the previous paragraph.

Proposed amendments to §153.12 relate to oral and electronic loan applications. Section 50(a)(6)(M)(i) provides that a home equity loan closing must occur at least 12 days after the owner "submits a loan application to the lender." Proposed new §153.12(3) would explain that a loan application may be submitted electronically in accordance with state and federal law governing electronic disclosures, with references to the UETA and the E-Sign Act. These amendments respond to an informal precomment recommending amendments to §153.12 on electronic disclosures. A

proposed amendment to §153.12(2) would also replace the word "given" with "submitted," to be consistent with Section 50(a)(6)(M)(i).

A proposed amendment to §153.13 describes requirements for providing an electronic copy of the preclosing disclosure. Section 50(a)(6)(M)(ii) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and a final itemized disclosure of amounts that will be charged at closing. The current interpretation at §153.13 refers to these items as the "preclosing disclosure." Proposed new §153.13(4) would explain that the lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and would include references to the UETA and the E-Sign Act.

The amendment to §153.13 responds to a request that the commissions received in September 2020, while the commissions were conducting a rule review of Chapter 153. As a result of the rule review, the commissions amended §153.22 to specify that the lender may provide signed documents electronically in accordance with state and federal law. In an official comment, a stakeholder recommended either: (1) adopting a new section to specify that the lender may electronically deliver all notices, disclosures, and documents to the property owner, or (2) amending Chapter 153's individual sections on required disclosures to specify that the lender may electronically deliver each disclosure. Although the commissions and the agencies generally do not object to the use of electronic disclosures, the commissions received this suggestion too late in the rulemaking process to include the proposed changes in the October 2020

adoption of rule review amendments. The commissions indicated that the agencies would revisit this issue in the future. After reviewing the request, the commissions believe that it is appropriate to amend each section of Chapter 153 requiring disclosures individually. This will help ensure that Chapter 153 remains clear with respect to which constitutional provision is interpreted by each section of Chapter 153.

In addition, an informal precomment recommended that §153.13 (and other sections in this proposal) consistently refer to both electronic signatures and delivery of electronic documents, when describing requirements under state and federal law. In response to this precomment, the proposed new text throughout this proposal refers to both of these sets of requirements.

A proposed amendment to §153.17 describes Section 50's applicability to out-of-state financial institutions. Section 50(a)(6)(P) of the Texas Constitution lists the entities that are authorized to make home equity loans, and includes "a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States." Proposed new §153.17(2) specifies that for purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a financial institution described by Texas Finance Code, §201.101(1)(A)-(D) that is chartered under the laws of another state and does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102. The financial institutions described by Texas Finance Code, §201.101(1)(A)-(D) are banks (including savings banks), savings and loan associations, and credit unions.

The amendment to §153.17 responds to a request that the agencies received from an out-of-state bank in March 2021. The request asks whether a bank organized under the laws of another state may make a home equity loan under the Texas Constitution. The commissions believe that proposed new §153.17(2) appropriately answers this question by referring to provisions of the Texas Finance Code that govern out-of-state financial institutions in Texas.

In an informal precomment, a stakeholder recommended deleting the phrase "or the United States" and adding an exception for institutions doing business under the laws of the United States. The stakeholder argued that the proposed text creates an inconsistency because institutions doing business under the laws of the United States are not chartered under the laws of a state. The commissions do not believe that the proposed amendment to §153.17 creates an inconsistency. The proposed amendment uses the word "includes," and does not suggest that the listed state-chartered institutions are the entire population of financial institutions encompassed by Section 50(a)(6)(P). The commissions do not believe that the stakeholder's recommended change would clarify the text, and have not included it in the current proposal. However, for clarity, the proposed amendment to §153.17 includes the phrase "state-chartered" before "financial institution."

A proposed amendment to §153.22 would revise references to the UETA and the E-Sign Act, to refer to these statutes consistently with other sections in this proposal.

A proposed amendment to §153.26 describes requirements for electronically

signing the acknowledgment of fair market value. Section 50(a)(6)(Q)(ix) of the Texas Constitution requires the lender and the owner to sign a written acknowledgment of the fair market value of the homestead property. Proposed new §153.26(4) would explain that the owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this proposal.

A proposed amendment to §153.45 describes requirements for providing an electronic copy of the refinance disclosure. Section 50(f)(2)(D) of the Texas Constitution requires the lender to provide a refinance disclosure to the owner if the owner applies for a refinance of a home equity loan to a non-home-equity loan. Proposed new §153.45(4)(E) would explain that the lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this proposal.

A proposed amendment to §153.51 describes requirements for providing an electronic copy of the consumer disclosure. Section 50(g) of the Texas Constitution requires the lender to provide a consumer disclosure to the owner at least 12 days before closing a home equity loan. Proposed new §153.51(2) would explain that the lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September

2020 stakeholder request on electronic disclosures described earlier in this proposal.

The commissions invite stakeholder comments on whether the proposed amendments appropriately refer to both the UETA and the E-Sign Act. The commissions' general understanding is that both of these statutes contain requirements relating to electronic delivery and signatures, and that prudent lenders will comply with both statutes in providing and executing electronic documents. If any stakeholders have a different understanding of the applicability of these statutes and recommend a different approach to the proposed amendments, then the commissions would be interested in receiving comments on this issue, along with any suggested alternative text.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), Antonia Antov (Director of Operations, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing and Registration, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), William Purce (Director of Mortgage Regulation, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits

anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will provide clearer guidance to ensure that lenders comply with Section 50.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would expand current §153.1, §153.12, §153.13, §153.17, §153.26, §153.45, and §153.51 to provide additional guidance to lenders. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov). To

be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50. No statute is affected by this proposal.

### *Chapter 153. Home Equity Lending*

#### *§153.1. Definitions*

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) - (6) (No change.)

(7) E-Sign Act--the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(8) [(7)] Equity loan--An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(9) [(8)] Equity loan agreement--the documents evidencing the agreement between the parties of an equity loan.

(10) [(9)] Fair Market Value--the fair market value of the homestead as determined on the date that the loan is closed.

(11) [(10)] Force-placed insurance--insurance purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(12) [(11)] Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time.

(13) [(12)] Lockout provision--a provision in a loan agreement that prohibits a borrower from paying the loan early.

(14) [(13)] Owner--A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(15) [(14)] Preclosing Disclosure--The written itemized disclosure required by Section 50(a)(6)(M)(ii).

(16) [(15)] Two percent limitation--the limitation on fees in Section 50(a)(6)(E).

(17) UETA--the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322

*§153.5. Two Percent Fee Limitation*~~/percent fee limitation~~: *Section 50(a)(6)(E)*

An equity loan must not require the owner or the owner's spouse to pay, in

addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two percent of the original principal amount of the extension of credit, excluding fees for an appraisal performed by a third party appraiser, a property survey performed by a state registered or licensed surveyor, a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(1) - (2) (No change.)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(12) [~~§153.1(11)~~] of this title (relating to Definitions) are not fees subject to the two percent limitation.

(A) - (B) (No change.)

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under §153.1(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation.

(5) (No change.)

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation.

(7) (No change.)

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(12) [~~§153.1(11)~~] of this title, are fees subject to the two percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, flood zone determination, tax certificate, inspection, or appraisal management services.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) - (11) (No change.)

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.1(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) - (20) (No change.)

*§153.12. Closing Date: Section 50(a)(6)(M)(i)*

An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. One copy of

the required consumer disclosure may be provided to married owners. For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure.

(1) (No change.)

(2) A loan application may be submitted [given] orally [or electronically].

(3) A loan application may be submitted electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

*§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii)*

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

(1) - (3) (No change.)

(4) The lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(5) [(4)] Bona fide emergency.

(A) - (B) (No change.)

(6) [(5)] Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) - (C) (No change.)

(7) [(6)] An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(8) [(7)] The owner maintains the right of rescission under Section 50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

*§153.17. Authorized Lenders: Section 50(a)(6)(P)*

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is



located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this section; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage banker or mortgage company.

(1) An authorized lender under Texas Finance Code, Chapter 341 must meet both constitutional and statutory qualifications to make an equity loan.

(2) For purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a state-chartered financial institution described by Texas Finance Code, §201.101(1)(A)-(D) that:

(A) is chartered under the laws of another state; and

(B) does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102.

(3) [(2)] A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section

50(a)(6)(P)(ii). Loan correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P).

(4) [(3)] A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company for purposes of Section 50(a)(6)(P)(vi). A person who is registered under Texas Finance Code, Chapter 157 is a person regulated by this state as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

(5) [(4)] A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).

*§153.22. Copies of Documents: Section 50(a)(6)(Q)(v)*

At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan.

(1) - (2) (No change.)

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA [~~Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322,~~] and the

[federal] E-Sign Act [~~15 U.S.C. §§7001-7006,~~] include requirements for electronic signatures and delivery.

*§153.26. Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)*

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

(1) - (3) (No change.)

(4) The owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

*§153.45. Refinance of an Equity Loan: Section 50(f)*

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) - (3) (No change.)

(4) Refinance Disclosure. To meet the condition in Section 50(f)(2)(D), the lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner on a separate document not later than the third business day after the date the owner submits the loan application to the lender and

at least 12 days before the date the refinance of the extension of credit is closed.

(A) - (D) (No change.)

(E) The lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(F) [(E)] One copy of the required refinance disclosure may be provided to married owners.

(G) [(F)] The refinance disclosure is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan or refinance. A lender may supplement the refinance disclosure to clarify any discrepancies or inconsistencies.

(H) [(G)] A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

(I) [(H)] The Finance Commission will publish a Spanish translation of the refinance disclosure on its website. A lender whose discussions with the owner are conducted primarily in Spanish may provide the Finance Commission's Spanish translation to the owner, although the Spanish translation is not required by Section 50(f)(2).

*§153.51. Consumer Disclosure: Section 50(g)*

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) (No change.)

(2) The lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(3) ~~[(2)]~~ Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(4) ~~[(3)]~~ A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(5) [(4)] A lender whose discussions with the borrower are conducted primarily in Spanish for a closed-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(6) [(5)] If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing:

Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

### **Certification**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 20, 2021, and August 27, 2021.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner  
Joint Financial Regulatory Agencies

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**B.**

**Office of Consumer Credit  
Commissioner**

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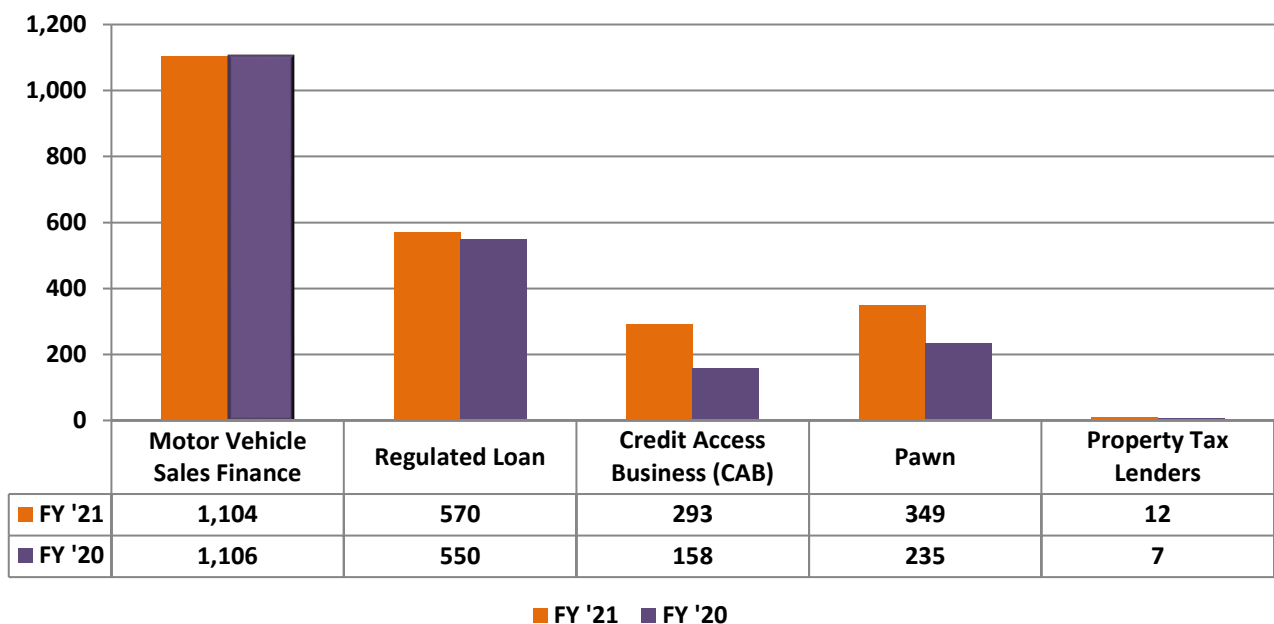
## Consumer Protection and Consumer Assistance Report

The OCCC's examination performance exceeds exam production targets as of June 30, 2021 with 93% of the fiscal year 2021 target number of exams completed. The multi-state auto finance exam commenced since the last briefing is well underway. This examination is being conducted in coordination with the Consumer Financial Protection Bureau (CFPB). Completion of the state's portion of this exam is expected by the end of the fiscal year. A second multi-state auto finance exam has begun and is in the initial planning stages. The OCCC is serving as Single-Point-of-Contact (SPOC) and the Examiner-In-Charge (EIC) for all participating states for both multi-state auto finance exams. Participation in two multi-state mortgage exams is complete. Findings and reports have been submitted to the Multi-State Mortgage Committee (MMC). The MMC will compile the participating states responses and will finalize and approve the exam reports.

The OCCC's initiative to attain re-accreditation as a mortgage regulator under the Conference of State Bank Supervisors Accreditation Program is complete. The agency has submitted all materials and key personnel have been interviewed by the CSBS Accreditation Review Team. CSBS's final determination is expected within 45 days.

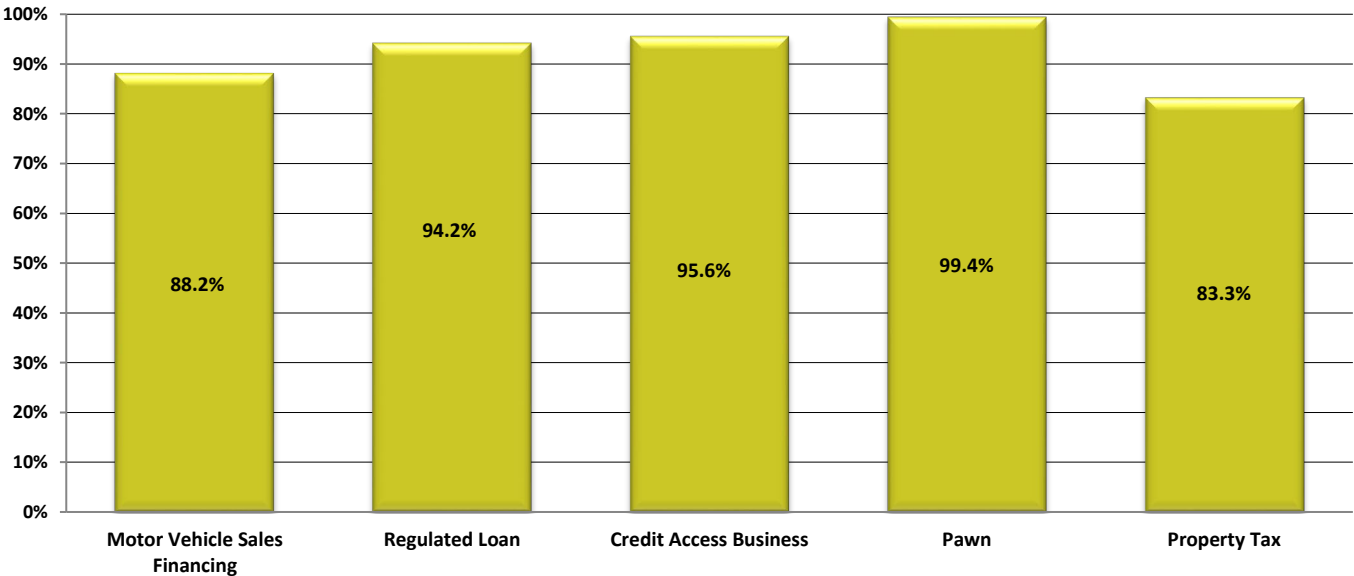
Staff development and retention remains a primary focus area. In support of this focus, two examiners successfully completed FE III certification and testing in July. This brings the total to four examiners promoted to FE III during this fiscal year. The Examination Department has hired three new Financial Examiners who will begin their training on August 2, 2021.

### Examinations Conducted: Sept - Jun Fiscal Year Comparison

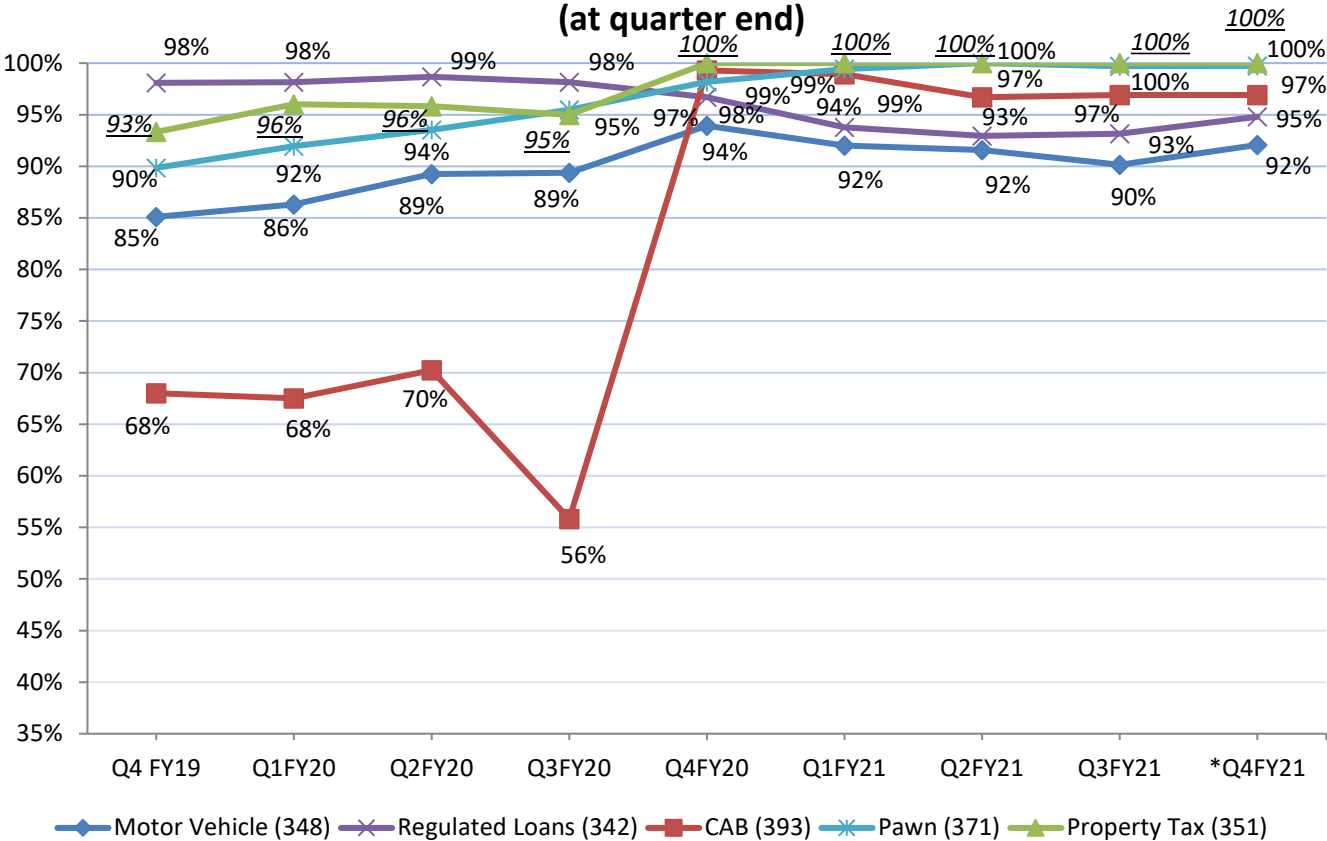


The second chart below denotes the acceptable level of compliance on a trailing 12-month basis through the end of June 2021.

**Acceptable Level of Compliance FY '21 (Sept 2020 - Jun 2021)**



**Acceptable Compliance Levels - Trailing 12 Months  
(at quarter end)**

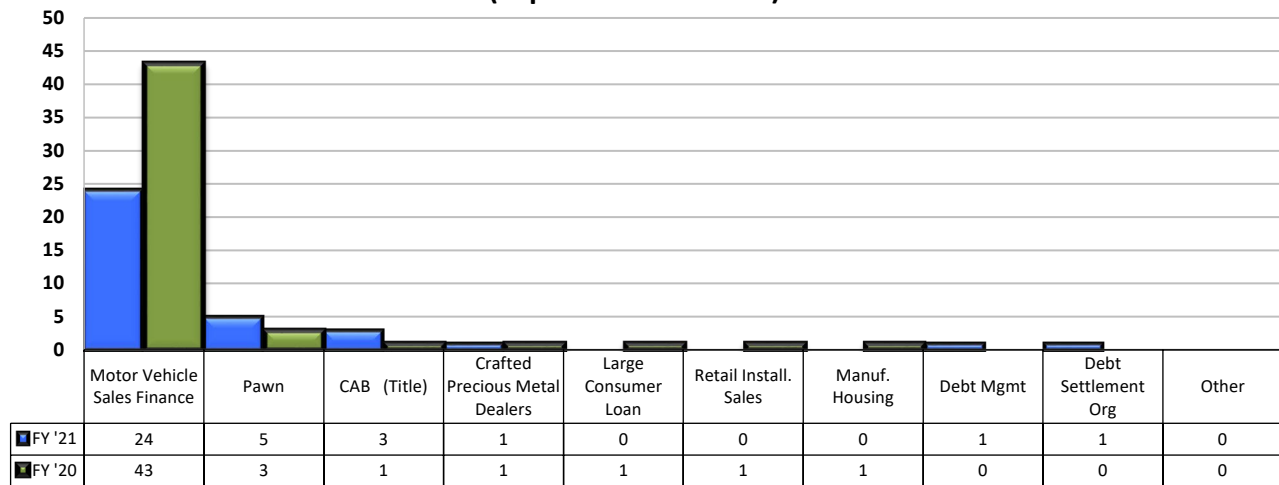




## Investigations

For FY 2021, the OCCC has completed 35 investigations, 63.6% of the FY 2021 goal of 55. While activity in this area increased substantially over the past two months, the number of investigations completed is still being impacted by COVID-19 restrictions. Motor Vehicle Sales Finance comprises 68.6% of the overall number of investigations.

### Investigations Completed FY '21 (Sept 2020 - Jun 2021) Total: 35 FY '20 (Sept 2019 - Jun 2020) Total: 51



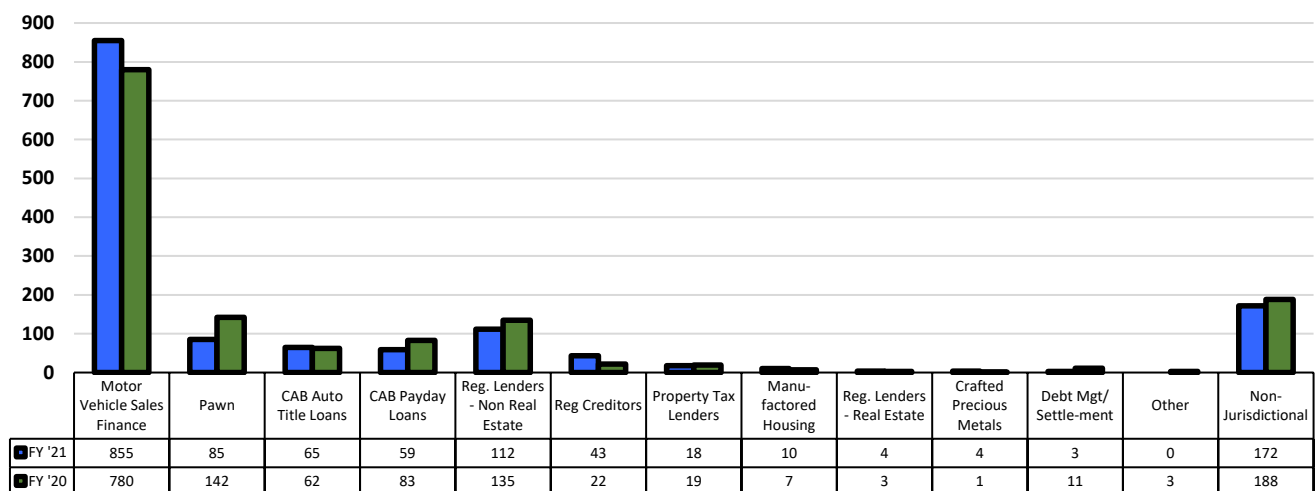
## Consumer Assistance

For this period 1,430 complaints were closed of which 172 were classified as non-jurisdictional.

The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Business (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn.

MVSF complaints were the largest complaint category at 59.8%. The second largest category were CAB complaints at 8.7% collectively; separately, these are 4.1% for payday loans and 4.6% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 7.8%. The fourth largest category was Pawnshops at 5.7%.

### Complaints Closed FY '21 (Sept 2020 - Jun 2021) FY '20 (Sept 2019 - Jun 2020)



**Fiscal Year 2021: Number of Complaints Closed by Source (Table 1), Subject (Table 2), and Disposition (Table 3).**

**Table 1**

Source of Complaint	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Consumer	373	375	403	N/A
Business	2	0	0	N/A
Law Enforcement	1	0	0	N/A
State or Federal Agency	47	34	23	N/A
OCCC	7	34	4	N/A
Whistleblower	0	0	1	N/A
Other	0	0	1	N/A
<b>Total</b>	<b>430</b>	<b>416</b>	<b>432</b>	<b>N/A</b>

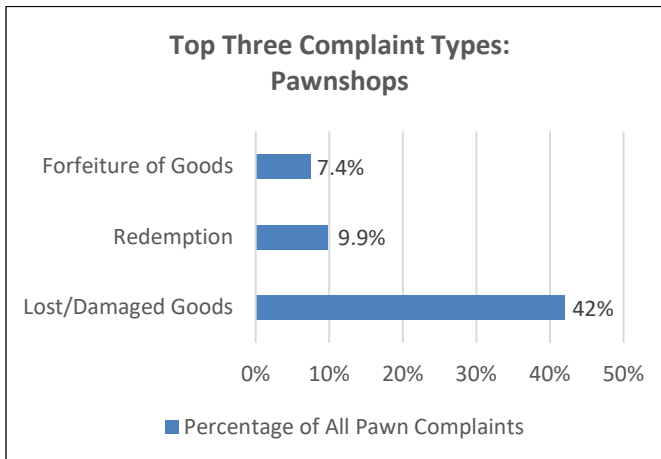
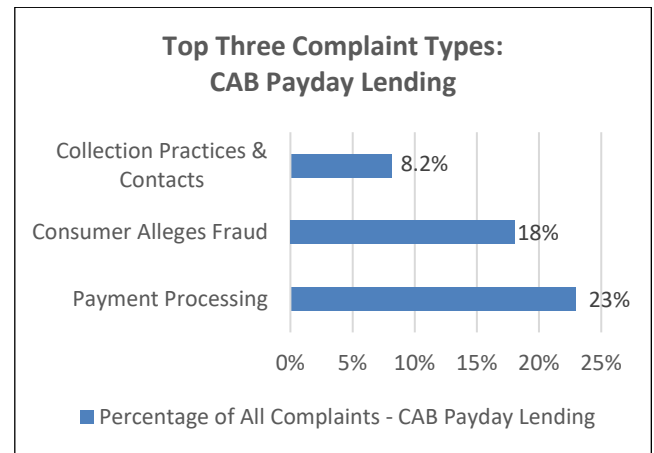
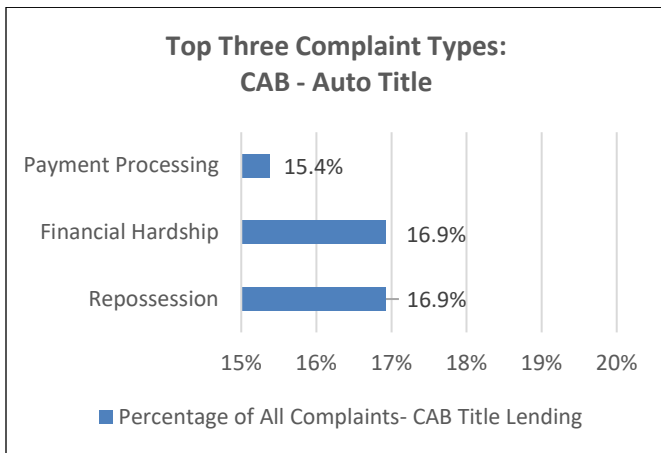
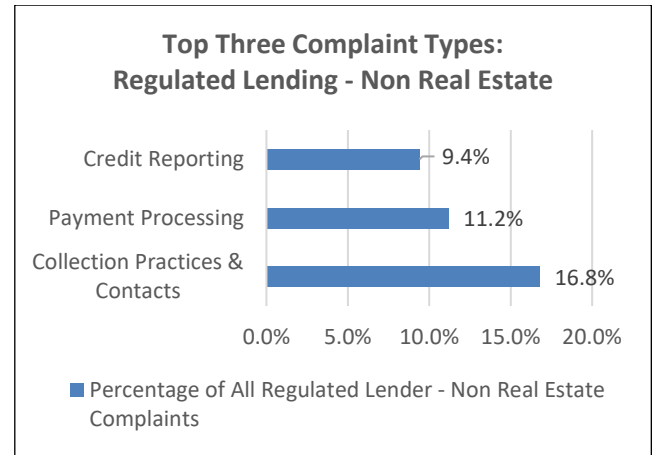
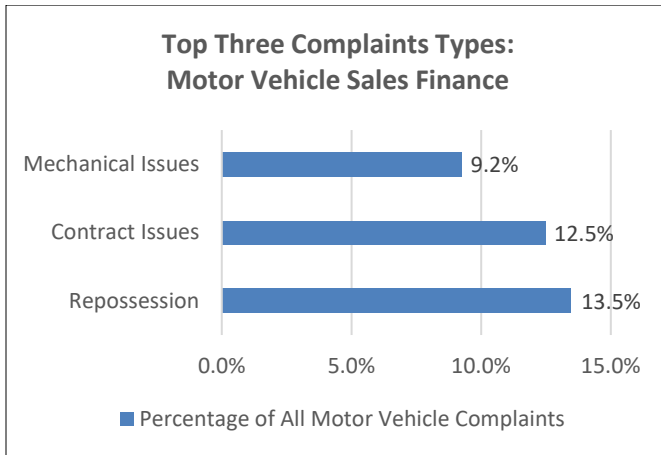
**Table 2**

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	253	244	256	N/A
CAB Payday Loans	22	17	14	N/A
CAB Auto Title Loans	13	21	26	N/A
Reg. Lenders Non-Real Estate	43	29	31	N/A
Pawn	19	32	30	N/A
Registered Creditors	18	9	9	N/A
Crafted Precious Metals Dealers	1	1	2	N/A
Mortgage Lenders: Real Estate	1	0	3	N/A
Manufactured. Housing	4	5	1	N/A
Property Tax Lenders	7	3	6	N/A
Debt Management/Settlement	1	1	1	N/A
Non-Jurisdictional	48	54	53	N/A
Refund Anticipation Loan	0	0	0	N/A
Other	0	0	0	N/A
<b>Total</b>	<b>430</b>	<b>416</b>	<b>432</b>	<b>N/A</b>

**Table 3**

Disposition:	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	7	8	4	N/A
Closed to Legal	0	2	0	N/A
Closed-Action Taken	212	152	180	N/A
Closed-No Violation	75	85	77	N/A
Closed-Administratively	88	115	118	N/A
Closed-Non Jurisdictional	48	54	53	N/A
<b>Total</b>	<b>430</b>	<b>416</b>	<b>432</b>	<b>N/A</b>

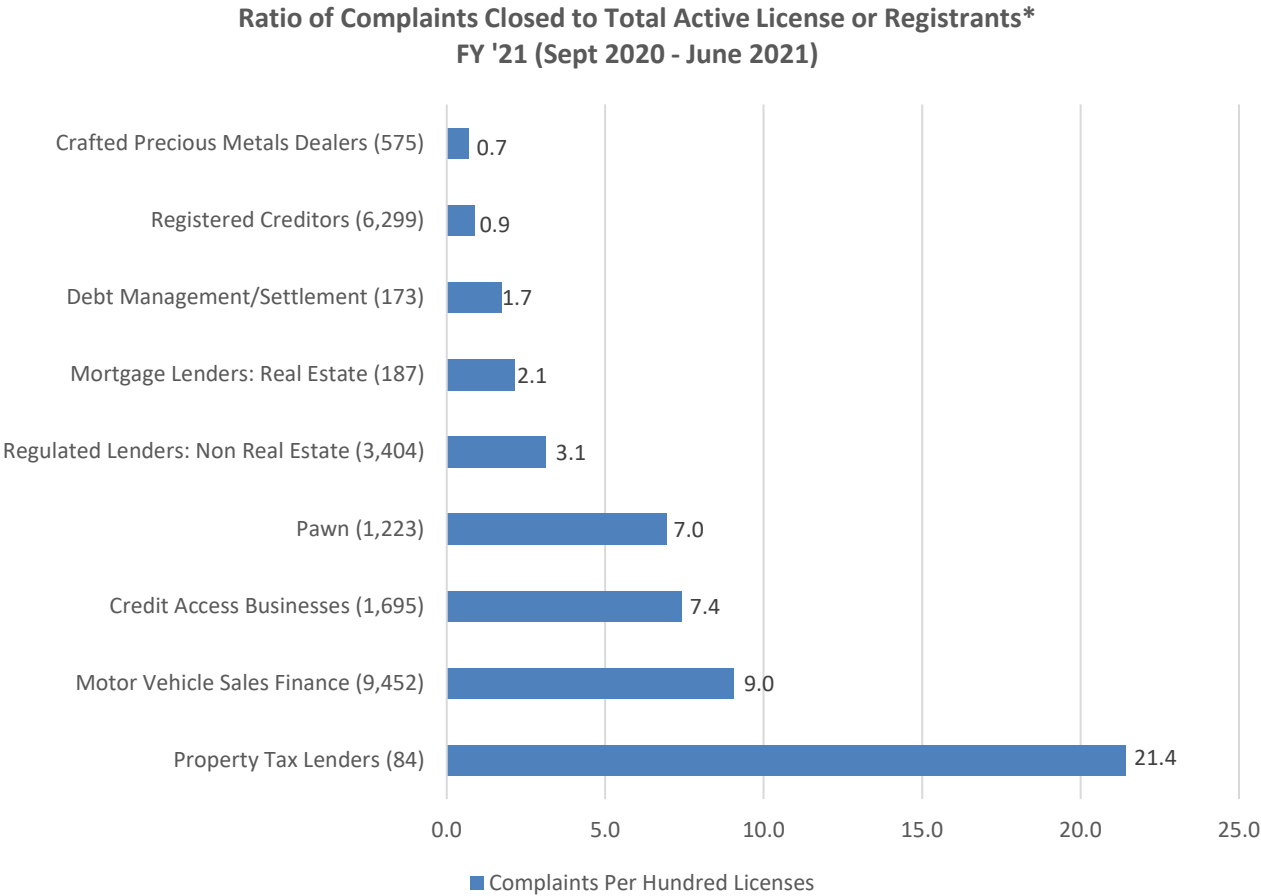
Each of the following charts represent the three top complaint areas per license type:



### Consumer Assistance Activities Information by Quarter

Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage Written Complaints Closed within 90 days	92.8%	95.1%	93.1%	N/A
Average Number of Days to Close a Complaint	41.9	37.7	38.0	N/A
Number of Complaints Closed	430	416	432	N/A

Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio of complaints to total active business licenses and registrations were Property Tax Lenders. Motor Vehicle Sales Finance had the second highest ratio followed by, Credit Access Business as the third, and Pawn as the fourth highest.





## **Licensing Report- August 2021**

*Mirand Diamond, Director of Licensing & Finance*

### Renewals

The department has concluded renewal for pawn shops and pawn employees with 98.5% of pawn shops renewing and 60% of pawn employees renewing. More than 95% of these renewals were submitted online. As stated in previous reports, the department estimated that 97% of shops would renew and 25% of employees would renew.

The department is beginning to prepare for motor vehicle sales finance renewal which starts in October, and hopes to open renewal early online in September.

### Applications Processing

The team continues to maintain all aspects of departmental functionality while working a hybrid model of in-office hours and telecommuting.

The volume of incoming applications remains near 140 monthly on average in FY 2021, holding steady as related to prior fiscal years.

### Other Updates

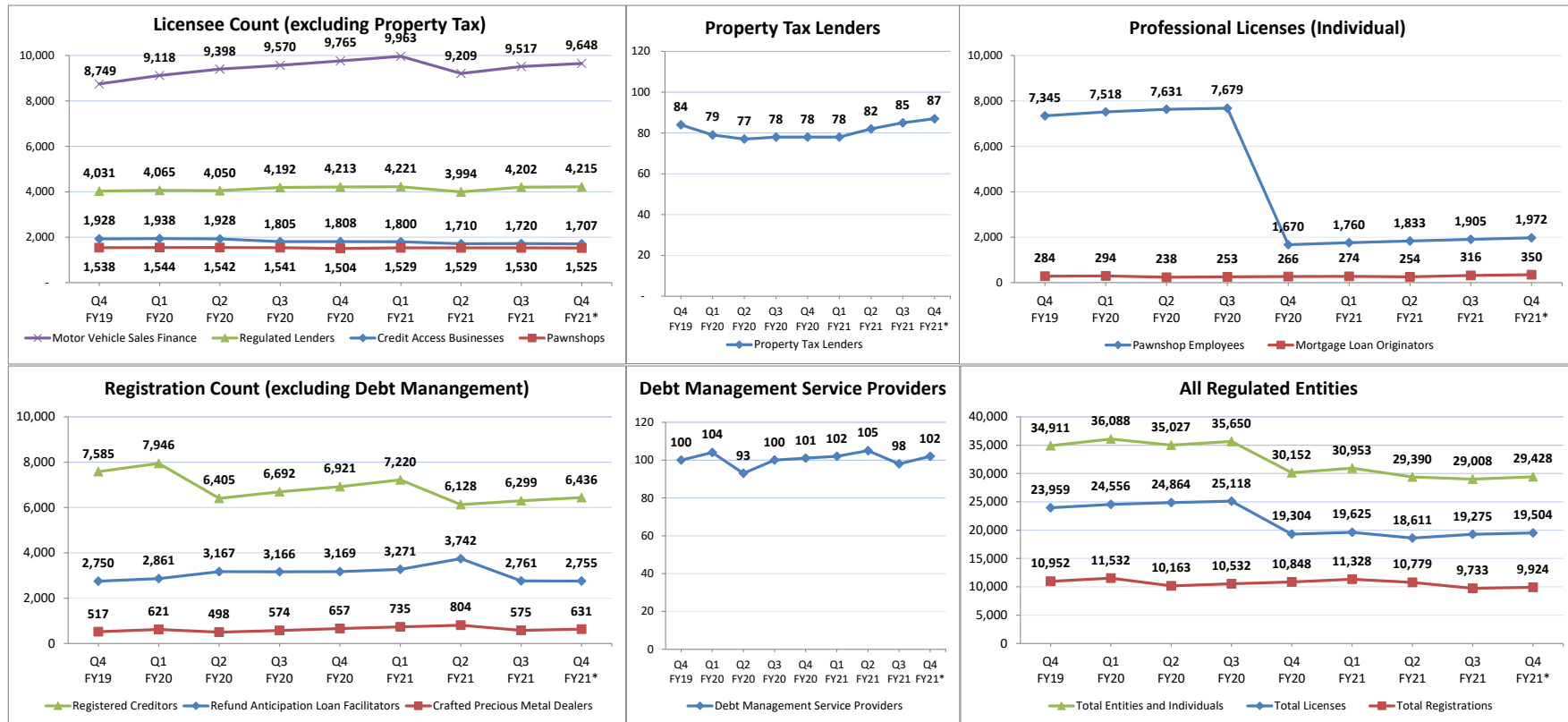
The department continues to work with IT and the agency's change advisory committee to enhance ALECS, including an upcoming project on revenue collection from companies that are not licensed or registered with the agency, but need to pay for services.

Leadership within the department continues to work to fill a vacancy for one license and permit specialist.

### Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2019 and 2020 to current data.

## Number of OCCC Regulated Entities Quarterly Comparison of FY19-21



\*Q4 data through 7/31/2021



## **ADMINISTRATION REPORT**

### **FINANCIAL EDUCATION AND TFEE**

As of July 31, 2021, the Financial Education Department provided education services to 1,230 individuals. Events included a joint webinar with the Department of Banking, an FDIC Money Smart: Credit Cards webinar, and financial wellness walk & talk podcast with ERS staff. Additionally, as part of Military Consumer Month, the Texas Veteran's Land Board included a link to OCCC financial education webinars and TFEE information in their July newsletter.

The 2020-2021 TFEE grant cycle third semi-annual reports were due on July 31. Reimbursement requests are under review and being processed. The third semi-annual report will be available during the October Finance Commission meeting.

The 2022-2023 TFEE grant cycle application window launched on July 1, 2021. The deadline to submit applications is September 1, 2021. Applications will then be reviewed by the Grant Advisory Committee. Recommendations for grant awards will be made during the October Finance Commission meeting. The 2022-2023 grant cycle will begin January 1, 2022.

### **COMMUNICATION**

The OCCC continues to communicate with stakeholders through presentations and written publications. Advisory Bulletins regarding Coronavirus Guidance were updated on July 16, 2021. Additionally, agency staff provided a combination of in-person and virtual presentations through various channels to regulated entities and other regulatory groups.

- On July 15, 2021, Financial Examiner Eric Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On July 21, 2021, Deputy General Counsel Matthew Nance, Director of Licensing and Finance Mirand Diamond, Supervising Examiner Christine Graham, and Senior Paralegal Ginger Harmon held a TFEE Rule Review stakeholder webinar.
- On July 21, 2021, Commissioner Pettijohn, Deputy General Counsel Matthew Nance, Director of Licensing and Finance Mirand Diamond, Supervising Examiner Karl Hubenthal, and Senior Paralegal Ginger Harmon held a Property Tax Lender Rule Review stakeholder webinar.
- On July 26, 2021 Commissioner Pettijohn, Director of Consumer Protection Huffman Lewis, and Senior Examiner Eric Fancher provided a compliance education presentation and participated in the Texas Independent Automobile Dealers Association convention in Round Rock.
- On July 26, 2021, Deputy General Counsel Matthew Nance and Senior Paralegal Ginger Harmon held a Home Equity stakeholder webinar on Electronic Disclosure & applicability to out-of-state Financial Institutions.

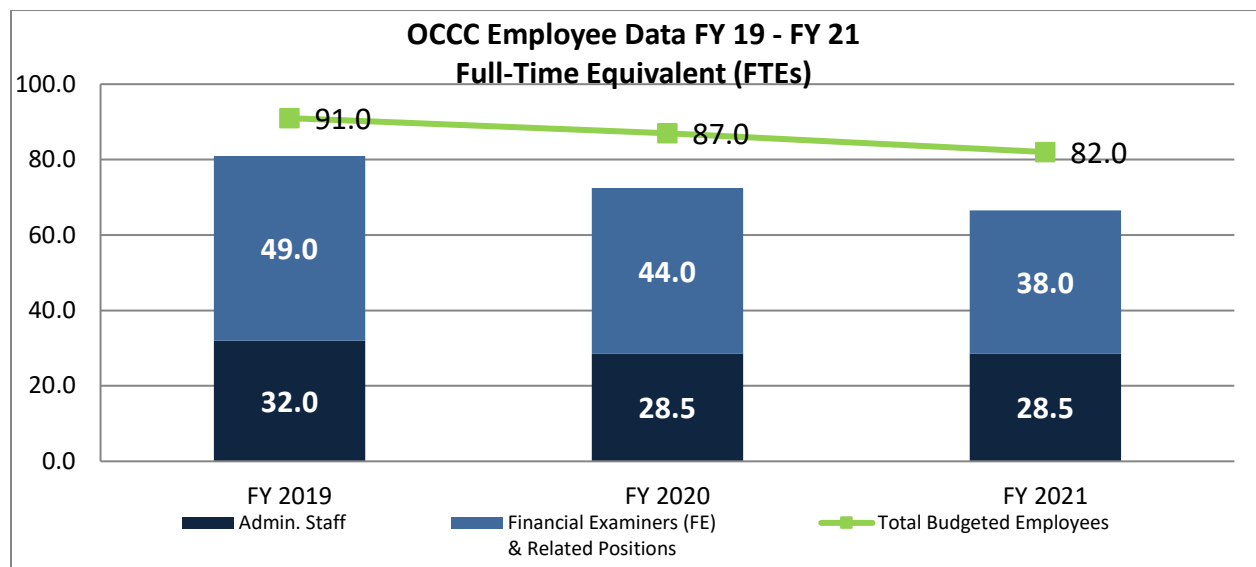
- On July 27, 2021, Commissioner Pettijohn provided introductory remarks for the virtual Texas Financial Literacy Summit, sponsored by Texas Bankers Association and Texas Jump\$tart Coalition.
- On July 27, 2021, Financial Education Coordinator Andrea Johnson spoke at a Virtual Town Hall sponsored by One Main Financial.
- On July 30, 2021, Deputy General Counsel Matthew Nance, Director Huffman Lewis, Supervising Examiner Karl Hubenthal, and Senior Paralegal Ginger Harmon held a Regulated Lender Administrative Fee Rule stakeholder webinar.
- On July 30, 2021, Commissioner Pettijohn and Director of Consumer Protection Huffman Lewis presented at the Texas Consumer Finance Association convention in San Antonio, TX.

### **HUMAN RESOURCES**

During this reporting period from the end of May 2021 to the end of July 2021, the OCCC was staffed with a total of 67 FTEs. Currently OCCC has the following open positions.

Vacancy	Status
License and Permit Specialist III	Open – 1
Financial Analyst I	Open – 1
Financial Examiner	Open – 3 (2-Houston, and 1-Fort Worth/Dallas)

The following chart compares administrative staff vs. financial examiners (FEs) for the last three fiscal years.



The turnover rate as of July 2021 is 12.3%, and the chart below represents FY21 data.

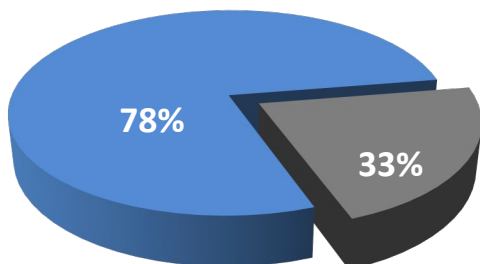


### OCCC Turnover Categories

#### FY 21 - All Employees

(09/01/2020 - 7/31/2021)

9 total - 7 Voluntary Resignations and 2 Interagency Transfer.



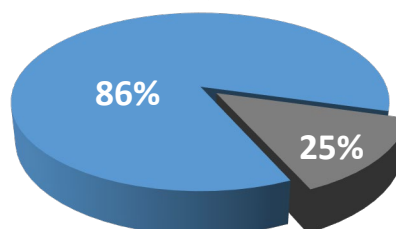
■ Voluntary Resignation ■ Interagency Transfer

### OCCC Turnover Categories

#### FY 21 - FE Series

(09/01/2020 - 7/31/2021)

7 total - 6 Voluntary Resignations and 1 Interagency Transfer.



■ Voluntary Resignation ■ Interagency Transfer

OCCC employees are following annual required policies and updates. Policies are regularly monitored to ensure compliance with local, state and federal law. HR continues to monitor health and safety measures for staff working in the Austin headquarters.

### INFORMATION TECHNOLOGY

#### Cybersecurity

Addressing a finding of the Texas Cybersecurity Framework audit, each member of IT now has their own, unique administrative domain account to enhance traceability.

The nearly-coincidental disclosures of the Kaseya and Microsoft Print Spooler (PrintNightmare) vulnerabilities created a complex situation wherein the Austin office had to tightly constrain in-house printing for several days. After Kaseya successfully provided a secure solution, it was re-activated by our vendor, and Print Spooler patches were applied, restoring normal internal services.

#### Hardware and technology deployment

As of the first week of August, the cycle of hardware deployment related to endpoint devices was concluded. The FY21 cycle ensured that the examination staff has a laptop within the current lifecycle, with updated versions of Microsoft Windows 10, and relevant applications. Austin staff is fast following, with only a handful of upgrades still to deploy.

#### Training

The annual requirement for cybersecurity training for external vendor personnel with authorized access into agency systems was completed in June.

An elective audit of the agency network firewall was concluded. The highest-priority findings have been addressed. All open ports were identified as serving legitimate application-based purposes.

### **Web presence**

Financial and technical considerations led to the executive decision to retain the existing agency website and upgrade the software platform, with renovations as deemed necessary by each department. The Statement of Work is being drafted. This effort does not affect the ALECS website.

### **ALECS**

Preparations for the conversion and interfacing with CAPPs are nearly complete. In particular, IT worked to ensure that revenue data from ALECS will interface with the CAPPs system. IT is ready for the August 31 to September 01 transition.



## **Accounting Report- August 2021**

*Mirand Diamond, Director of Licensing & Finance*

### Staffing

The accounting department has hired an Accountant VI who began work with the agency on August 2. The team is now fully staffed and training will commence with this new accountant.

### CAPPS

The department continues to make preparations to transition to CAPPS - Financials. Soft go-live will begin in mid-August and the OCCC will begin utilizing CAPPS for the foreseeable future at that time.

The discovery phase of CAPPS HR/Payroll implementation will also begin soon.

### Procedures

Procedures for travel are currently being enhanced in response to the last internal audit. The department is working to complete procedure reviews in phases, and continues to identify tasks that need procedures to be written, reviewed or updated.

### Other Items

The accounting department prepared the proposed budget for Fiscal Year 22 and will present the budget at the public hearing on August 11. Preparations for year-end closing and the annual financial report are also imminent with the fiscal year end close at the end of August.

# OFFICE OF CONSUMER CREDIT COMMISSIONER

## EXECUTIVE SUMMARY

*As of May 31, 2021*

	FY 2019	FY 2020	FISCAL YEAR 2021				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned (000)	14,578	4,391	808	555	302		1,665
Regulated Lenders Examinations	942	576	250	134	136		520
Property Tax Lender Examinations	30	7	1	7	4		12
Pawnshop Examinations	473	276	22	129	162		313
Motor Vehicle Examinations	2,463	1,350	288	213	450		951
Credit Access Businesses Examinations	475	284	14	279	0		293
CONSUMER ASSISTANCE							
Telephone Complaints Received	510	459	100	146	138		384
Written Complaints Received	1,151	1,303	274	283	281		838
Total Complaints Closed	1,737	1,756	430	416	432		1,278
% of Written Complaints Closed within 90 Calendar Days	85.4%	86.6%	92.8%	95.1%	93.1%		93.6%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	417	188	112	23	10		145
Finalized	324	270	80	78	21		179
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	4,031	4,213	4,221	3,994	4,202		4,202
Pawnshop Licenses	1,538	1,504	1,529	1,529	1,530		1,530
Pawnshop Employee Licenses	7,345	1,670	1,760	1,833	1,905		1,905
Commercial MV Sales Fin. Licenses	49	54	58	52	54		54
Motor Vehicle Sales Finance Licenses	8,700	9,711	9,905	9,157	9,463		9,463
Property Tax Loan Licenses	84	78	78	82	85		85
Mortgage Loan Originators	284	266	274	254	316		316
Credit Access Business Licenses	1,928	1,808	1,800	1,710	1,720		1,720
Registrations							
Registered Creditors	7,585	6,921	7,220	6,128	6,299		6,299
Crafted Precious Metal Dealers	517	657	102	804	575		575
Debt Management Service Providers	100	101	102	105	98		98
Refund Anticipation Loan Facilitators	2,750	3,169	3,271	3,742	2,761		2,761
Applications							
Business -- New	1,679	1,621	284	426	566		1,276
Business -- Change of Ownership	131	87	18	27	54		99
Pawnshop Employees -- New	3,640	630	99	104	87		290
HUMAN RESOURCES DATA							
Field Examiners Staffing	49	44	43	41	40		40
Total Staffing	81	73	73.5	72.5	70.5		70.5

**Office of Consumer Credit Commissioner  
Actual Performance for Output Measures  
Fiscal Year 2021**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	
<b>Output Measures-Key</b>					
<b>CONSUMER PROTECTION</b>					
<b>1-1-1 Complaint Resolution</b>					
<b>1. # Complaints Closed</b>					
<b>Quarter 1</b>	1,750	430	430	24.6%	
<b>Quarter 2</b>	1,750	416	846	48.3%	
<b>Quarter 3</b>	1,750	432	1278	73.0%	
<b>2-1-1 Examination and Enforcement</b>					
<b>1. # Examinations Completed</b>					
<b>Quarter 1</b>	2,500	575	575	23.0%	
<b>Quarter 2</b>	2,500	762	1,337	53.5%	
<b>Quarter 3</b>	2,500	752	2,089	83.6%	*
The OCCC exceeded the target for completing examinations as a result of a return to field exam operations in March. The field exam staff focused on pawnshop, motor vehicle, and regulated loan exams, but with limited travel which increased the availability of examiner time to perform more examinations.					
<b>EFFECTIVE LICENSING &amp; REGISTRATION</b>					
<b>2-2-1 Licensing and Registration</b>					
<b>1. # Business License Applications Processed</b>					
<b>Quarter 1</b>	1,750	284	284	16.2%	*
The Licensing Department had increased call volume and customer service contact in September and October due to motor vehicle renewal, which focused resources and time on these tasks and took time away from application processing, resulting in a lower number of applications processed in Q1 of FY 21. Application processing will increase during the remainder of the fiscal year. The department was also working to fill an administrative assistant vacancy during this time, which has since been filled.					
<b>Quarter 2</b>	1,750	426	710	40.6%	*
The Licensing Department had increased call volume and customer service contact in December due to renewal for regulated lenders, property tax lenders and credit access businesses, which focused resources and time on these tasks and took time away from application processing, resulting in a lower number of applications processed in Q2 of FY 21. Application processing will increase during the remainder of the fiscal year.					
<b>Quarter 3</b>	1,750	566	1,276	72.9%	
<b>FINANCIAL EDUCATION</b>					
<b>3-3-1 Financial Education</b>					
<b>1. # People Receiving Direct Educational Services</b>					
<b>Quarter 1</b>	775	247	247	31.9%	*
The Financial Education department exceeded first quarter goals for the number of people receiving direct education services as a result of increased attendance at agency webinars.					
<b>Quarter 2</b>	775	308	555	71.6%	*
The Financial Education Department has exceeded its target for number of people receiving direct education services. The agency has increased promotion of webinars via email and social media during FY 2021; this has resulted in increased attendance at OCCC hosted financial education webinars.					
<b>Quarter 3</b>	775	405	960	123.9%	*
The Financial Education Department has exceeded its target for number of people receiving direct education services. The OCCC continues to increase promotion of webinars via email, presentations, and social media. This has resulted in increased attendance at OCCC hosted financial education webinars.					

\*Varies by 5% or more from target.



## Legal Department Report

*Michael Rigby, General Counsel*

August 2021

### Enforcement Report

#### Contested Cases

The OCCC has two contested cases currently pending before the State Office of Administrative Hearings (SOAH).

##### ***Mike Jack Enterprises LLC d/b/a Houston Motors (SOAH Docket No. 466-21-1786)***

In January 2021, the OCCC notified Houston Motors that it intended to deny Houston Motors' license application based on unlicensed activity and failure to comply with an agreed order. Houston Motors requested a hearing on the license application denial, and a hearing was held by remote videoconference before SOAH on April 15, 2021. On June 10, the administrative law judge issued a proposal for decision recommending that the OCCC approve Houston Motors' license application and allow Houston Motors to pay a \$10,000 late filing fee in 10 installments. On July 26, in response to exceptions filed by the OCCC, the judge modified this proposal to specify that the 10 installments must be paid monthly, and to recommend license revocation if Houston Motors fails to make a timely payment.

##### ***PrimaLend Capital Partners, LP and Good Floor Loans LLC (SOAH Docket No. 466-21-1015)***

In April 2021, the OCCC issued an Amended Order to Cease and Desist Unlicensed Activity, Take Affirmative Action, and Make Restitution, alleging that PrimaLend and Good Floor engaged in unlicensed activity by acting as holders and transferees of motor vehicle retail installment contracts, and by making false representations of their rights under contracts. PrimaLend and Good Floor requested a hearing on the amended order, and a hearing before SOAH is scheduled for August 25, 2021. On July 12, both sides filed motions for summary disposition requesting that the administrative law judge rule on whether PrimaLend and Good Floor engaged in unlicensed activity.

#### Orders on Reporting Violations

In June 2021, the OCCC issued three orders against property tax lenders that did not timely and accurately file their 2020 annual reports by the deadline of March 31, 2021. Of these orders, two were injunctions requiring the licensees to file timely and accurate reports, and one imposed an administrative penalty for violating a previous injunction.

### Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last four fiscal years. These figures reflect enforcement actions that have been fully resolved by formal order, informal resolution, or dismissal. Actions that are still pending are not included in the table.

Enforcement Actions Closed as of July 31, 2021				
	FYTD 2021	FY 2020	FY 2019	FY 2018
<b>Injunction Actions</b>				
Crafted Precious Metal Dealer	0	1	0	0
Credit Access Business	31	27	53	27
Debt Management Provider	10	9	10	5
Manufactured Housing	0	0	0	0
Motor Vehicle Sales Finance	11	54	20	19
Motor Vehicle Sales Finance Commercial	1	0	0	0
Pawnshop	48	44	82	39
Pawnshop Employee	0	0	67	48
Property Tax Lender	0	1	8	2
Registered Creditor	0	1	0	1
Regulated Lender	28	49	22	12
Residential Mortgage Loan Originator	0	0	0	1
<b>Total Injunction Actions</b>	<b>129</b>	<b>186</b>	<b>262</b>	<b>154</b>
<b>Administrative Penalty Actions</b>				
Crafted Precious Metal Dealer	0	1	0	0
Credit Access Business	12	11	14	6
Debt Management Provider	1	3	0	1
Motor Vehicle Sales Finance	7	13	19	26
Pawnshop	15	29	12	6
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	3	6	6
Regulated Lender	18	18	7	0
Residential Mortgage Loan Originator	0	0	0	0
<b>Total Administrative Penalty Actions</b>	<b>53</b>	<b>78</b>	<b>58</b>	<b>45</b>
<b>Revocation / Suspension Actions</b>				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	1	0	1	0
Motor Vehicle Sales Finance	1	2	0	1
Pawnshop	4	0	0	0
Pawnshop Employee	0	0	1	0
Property Tax Lender	0	0	0	0
Regulated Lender	0	1	0	0
Residential Mortgage Loan Originator	0	0	0	0
<b>Total Revocation / Suspension Actions</b>	<b>6</b>	<b>3</b>	<b>2</b>	<b>1</b>
<b>Application Denial and Protest Actions</b>				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	1	3	2	0
Pawnshop	0	0	0	0
Pawnshop Employee	0	0	0	0
Property Tax Lender	0	0	0	0
Regulated Lender	0	0	0	0
Residential Mortgage Loan Originator	0	0	0	0
<b>Total App. Denial and Protest Actions</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>0</b>
<b>Total Actions Closed</b>	<b>189</b>	<b>270</b>	<b>324</b>	<b>200</b>

The following table includes data on performance measures the legal department is tracking.

September 1, 2020, through July 31, 2021	
Cases Opened	222
Cases Closed	189
Average Number of Days to Close an Enforcement Action	95
Contested Cases Referred to SOAH	4
Contested Cases Heard at SOAH	1
Final Orders Issued	164

The OCCC has one upcoming SOAH hearing described above.

### **Rule Actions**

At the August meeting, the OCCC is presenting the following rule actions:

- Readoption of 7 TAC Chapter 7 (relating to the Texas Financial Education Endowment), as well as proposed amendments to Chapters 7 and 83, resulting from rule review
- Readoption of Chapter 89 (relating to property tax lenders), as well as proposed amendments to Chapter 89, resulting from rule review
- Proposed amendments to Chapter 153 (relating to home equity lending) addressing electronic disclosures and out-of-state financial institutions' authority to make home equity loans

During July 2021, the OCCC requested feedback from stakeholders regarding the current rule in 7 TAC Chapter 83 that sets a \$100 maximum for the administrative fee for Chapter 342, Subchapter E regulated loans. Some regulated lenders have requested a rule amendment to increase this fee. The OCCC requested that stakeholders provide informal feedback on this issue by August 6.

### **Federal Rulemaking**

#### ***OCC True Lender Rule***

In October 2020, the Office of the Comptroller of the Currency (OCC), the primary regulator for national banks, issued a final rule identifying the "true lender" in loans where a national bank partners with another company. The OCC's rule states that a national bank makes a loan if it is named as the lender in the loan agreement or funds the loan. Some stakeholders, including the National Association of Consumer Credit Administrators, expressed concern that the rule would undermine states' ability to protect their citizens from usurious lending practices, and would leave an opening for so-called "rent-a-bank" schemes.

In June 2021, the U.S. Congress passed a resolution to invalidate the OCC's True Lender Rule under the Congressional Review Act (S.J. Res. 15). This means that the OCC's True Lender Rule (or any rule that is substantially the same) cannot take effect unless Congress amends federal law to allow it.

### **Advisory Bulletins**

From June 1, 2021 to July 31, 2021, the OCCC did not issue any new advisory bulletins.

During this period, the OCCC revised five previously issued advisory bulletins describing COVID-19 emergency measures for OCCC licensees, to explain that the bulletins' guidance is in effect through August



31, 2021. Where applicable, the OCCC added summaries of two bills passed during the recent legislative session: HB 3510 (allowing remote work for certain OCCC licensees) and SB 968 (prohibiting businesses from requiring COVID-19 vaccine documentation).

### **Official Interpretation Requests**

From June 1, 2021 to July 31, 2021, the OCCC did not receive any requests for official interpretations of the Texas Finance Code. As of July 31, 2021, there were no pending requests for official interpretations of the Texas Finance Code.

On March 30, 2021, the OCCC received a request for an official interpretation of the Texas Constitution's home equity lending provisions. The request asks whether a bank organized under the laws of another state may make a home equity loan under the Texas Constitution. The OCCC has discussed the request with staff of the other Joint Financial Regulatory Agencies (Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Texas Credit Union Department) and held a stakeholder webinar on July 26. The OCCC will present proposed amendments on this issue at the August Finance Commission meeting.

### **Public Information Requests**

<b>June 1, 2021 through July 31, 2021</b>	
Requests Received	35
Requests Closed	33
Requests Withdrawn	0
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	1.9

### **Gifts Received by the OCCC**

From June 1, 2021 to July 31, 2021, the OCCC received no gifts.

**B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, Resulting from Rule Review

**PURPOSE:** Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 7, and believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

**RECOMMENDED ACTION:** The OCCC requests that the Finance Commission readopt 7 TAC Chapter 7 following rule review, because the reasons for the rules continue to exist.

**RECOMMENDED MOTION:** I move that we readopt 7 TAC Chapter 7 following rule review, because the reasons for the rules continue to exist.

*Title 7. Banking and Securities*

*Part 1. Finance Commission of Texas*

*Chapter 7. Texas Financial Education Endowment Fund*

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 1, Chapter 7, concerning Texas Financial Education Endowment Fund, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 7 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 7 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

**B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review

**PURPOSE:** Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 89, and believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

**RECOMMENDED ACTION:** The OCCC requests that the Finance Commission readopt 7 TAC Chapter 89 following rule review, because the reasons for the rules continue to exist.

**RECOMMENDED MOTION:** I move that we readopt 7 TAC Chapter 89 following rule review, because the reasons for the rules continue to exist.

*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 89. Property Tax Lenders*

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 89, concerning Property Tax Lenders, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 89 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 89 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

## **B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, and Part 5, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review

**PURPOSE:** The purpose of the amendments to 7 TAC Chapters 7 and 83 is to implement changes resulting from the commission's review of Chapter 7 under Texas Government Code, §2001.039.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments to 7 TAC Chapters 7 and 83.

**RECOMMENDED MOTION:** I move that we approve the amendments in 7 TAC Chapters 7 and 83.

*Title 7. Banking and Securities*

*Part 1. Finance Commission of Texas*

*Chapter 7. Texas Financial Education Endowment Fund*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter B. Rules for Credit Access Businesses*

*7 TAC, Part 1, Chapter 7*

The Finance Commission of Texas (commission) proposes amendments to §7.102 (relating to TFEE Responsibilities), in 7 TAC, Chapter 7, concerning Texas Financial Education Endowment Fund.

The rules in 7 TAC Chapter 7 govern the Texas Financial Education Endowment (TFEE). The Texas Legislature established TFEE under Texas Finance Code, §393.628(c), in order to "support statewide financial education and consumer credit building activities and programs."

In general, the purpose of the proposed rule changes to 7 TAC Chapter 7 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 7 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

Proposed amendments to §7.102 relate to the consumer credit commissioner's authority to designate other persons to perform functions related to TFEE. New text in subsection (a) would explain that the investment officer's responsibilities include maintaining compliance. The proposal would also amend subsection (a) to move text on executing grant agreements into a new sentence. The updated text would provide some flexibility and clarify the commissioner's authority to designate another person (not necessarily the investment officer) to execute grant agreements.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will more clearly specify the responsibilities of the TFEE investment officer.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no

adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would not expand, limit, or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov). To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G

(governing credit access businesses). In addition, Texas Finance Code, §393.628 authorizes the commission to adopt rules regarding TFEE.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

*7 TAC, Part 5, Chapter 83, Subchapter B*

The Finance Commission of Texas (commission) proposes amendments to §83.3010 (relating to Fees) in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter B is to reduce the annual assessment paid by licensed CABs for the Texas Financial Education Endowment (TFEE).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

Proposed amendments to §83.3010 relate to the amount of the annual assessment that CABs pay toward TFEE. Currently, §83.3010(g)(4) requires each licensed entity to pay a fee up to \$200 for each annual renewal, to contribute to TFEE. This provision also explains that the commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose. The



proposed amendment to §83.3010(g)(4) would reduce the annual fee paid to TFEE from \$200 to \$100.

The commission and the OCCC believe that the endowment is close to a sustaining level, and that now is an appropriate time to reduce the \$200 assessment. As of February 28, 2021, the TFEE fund balance was approximately \$9.1 million. The fund balance has increased each year CABs have been licensed. For example, the fund balance was \$7.9 million in FY 2019 and \$8.3 million in FY 2020. In the 2020-2021 grant cycle, ten organizations were awarded a cumulative amount of \$300,000. In June 2021, the commission approved the TFEE Grant Advisory Committee's recommendation to disburse \$350,000 during the 2022-2023 TFEE grant cycle. The commission and the OCCC anticipate that a \$100 fee will enable TFEE to continue growing while also making substantial grants to support financial education in Texas.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of administering the rules. The proposed amendment to §83.3010 would decrease the annual CAB TFEE assessment from \$200 to \$100. Fees that CABs pay toward TFEE will decrease by approximately \$200,000 in each of the first five years the proposed rule change is in effect. In the last seven fiscal years, on average, the OCCC has collected approximately \$400,000 per year in fees from CABs for TFEE. Therefore, the OCCC anticipates that decreasing the fee by 50% will cause this amount to decrease by approximately \$200,000 per year. The rule change will not affect costs to the state. Ms. Diamond has determined that for the first

five-year period the proposed rule changes are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the annual assessment for credit access business licensees will be reduced by \$100.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes require a decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would limit current §83.3010 by reducing a fee. The proposal would not expand or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance,

Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov). To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.628 authorizes the commission to set the annual assessment that CABs pay toward TFEE (up to \$200), and authorizes the commission to adopt rules regarding TFEE.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

*Part 1. Finance Commission of Texas*

*Chapter 7. Texas Financial Education Endowment Fund*

*§7.102. TFEE Responsibilities.*

(a) Finance commission and Office of Consumer Credit Commissioner (OCCC). The finance commission administers all aspects of TFEE, including the grant program, gifts, donations, funding and policy decisions. The OCCC is responsible for collection of assessment fees, disbursement and tracking of TFEE funds, and maintaining financial records of revenue, expenditures, and reconciliation of funds. The Consumer

Credit Commissioner (commissioner) or the commissioner's designee serves as the investment officer appointed by the finance commission to maintain compliance, [execute grant agreements,] accept gifts and donations, and invest TFEE funds. The commissioner may designate a person to execute grant agreements.

(b) Grant Advisory Committee (GAC) and grant coordinator. The GAC serves in an advisory role and makes program recommendations to the grant coordinator and finance commission audit committee regarding TFEE administration. The grant coordinator serves under the direction of the commissioner, provides information regarding grant activity to the GAC and finance commission, and serves as the liaison between grantees and the GAC.

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter B. Rules for Credit Access Businesses*

*Division 3. Application Procedures*

*§83.3010. Fees*

(a) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) - (3) (No change.)

(4) In addition to the annual assessment fee, a fee not to exceed \$100 [~~\$200~~] is required for each annual renewal of a licensed entity, in order to contribute to the Texas Financial Education Endowment. The

finance commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose.

**Certification**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 20, 2021.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner

**B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments and a Repeal in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review

**PURPOSE:** The purpose of the amendments to 7 TAC Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments to 7 TAC Chapter 89.

**RECOMMENDED MOTION:** I move that we approve the amendments in 7 TAC Chapter 89.

*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 89. Property Tax Lenders*

The Finance Commission of Texas (commission) proposes amendments to §89.310 (relating to Fees) and §89.405 (relating to Denial, Suspension, or Revocation Based on Criminal History), and proposes the repeal of §89.409 (relating to License Reissuance), in 7 TAC, Chapter 89, concerning Property Tax Lenders.

The rules in 7 TAC Chapter 89 govern property tax lenders. In general, the purpose of the proposed rule changes to 7 TAC Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 89 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft, addressing the issue of below-market-rate loans under Texas Tax Code, §32.06(a-8). The precomment did not address the proposed rule changes in §§89.310, 89.405, and 89.409. The OCCC appreciates the thoughtful input provided by stakeholders.

A proposed amendment to §89.310 would adjust the volume-based portion of the annual fee paid by property tax lender licensees. Under Texas Finance Code, §351.154, property tax lender licensees are required to pay a license fee to the OCCC.

Under Texas Finance Code, §14.107, the commission is authorized to set the amount of the license fee in an amount necessary to recover the costs of administering Texas Finance Code, Chapter 351. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency. This means that the OCCC is responsible for the costs of its operations, and may set fees in amounts necessary for the purpose of carrying out its functions.

Under current §89.310(g)(1), the annual license fee paid by active property tax lender licensees consists of two components: (1) a fixed fee up to \$600, and (2) a volume fee up to \$0.03 for each \$1,000 advanced in property tax loans, in accordance with the property tax lender's most recent annual report. Under current §89.310(g)(3), the total annual license fee shall not average more than \$1,200 per active licensed location.

The proposed amendment to §89.310(g)(1)(B) would adjust the volume-based portion of the annual license fee from \$0.03 to \$0.05 per \$1,000 advanced. The commission and the OCCC believe that this change is necessary to ensure that licensing fees are sufficient to recover the costs of administering Texas Finance Code, Chapter 351. Currently, property tax lenders contribute approximately 0.8% of the total revenue that the OCCC receives from license fees. However, property tax lender examinations make up approximately 1.5% of the OCCC's workload of examination hours. This suggests that the current revenue from property tax lender license fees is not sufficient in comparison to other industries.

In the OCCC's experience, the property tax lending industry has required significant staff resources due to the complexity of the property tax loan transaction. A property tax lender examination often requires a team of examiners with specialized training and experience. On average, a property tax lender examination requires approximately 20 examination hours (compared to 16 hours for motor vehicle sales finance licensees and 10 hours for regulated lenders). The OCCC has also received a number of complaints about property tax lenders. Compared to other industries, property tax lenders have consistently tended to have a higher ratio of complaints to the number of active licensees. Many of these complaints are complex and require significant staff time to process. In the OCCC's experience, costs for property tax lenders tend to scale with loan volumes, with the OCCC generally expending more resources on property tax lenders that have larger loan volumes.

Currently, the volume-based fee for property tax lenders is lower than the corresponding fee for regulated lenders. Whereas property tax lenders currently pay \$0.03 per \$1,000 advanced under §89.310(g)(1)(B), regulated lenders currently pay \$0.05 per \$1,000 of loans made under Texas Finance Code, Chapter 342, Subchapter E, as provided by the current rule at 7 TAC §83.310(g)(1)(B)(iii) (relating to Fees). Adjusting the volume-based fee for property tax lenders from \$0.03 to \$0.05 would bring property tax lenders more in line with other licensees. This would help ensure that property tax lenders pay their fair share of costs for regulating the industry, and that other industries are not subsidizing the cost of regulating property tax lenders.

Proposed amendments to §89.405 relate to the OCCC's review of the criminal history

of a property tax lender applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The proposed amendments to §89.405 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Proposed amendments throughout subsections (c) and (f) of §89.405 would implement these statutory changes from HB 1342. Other proposed amendments to §89.405 include technical corrections, clarifying changes, and updates to citations.

The proposal would repeal §89.409. Currently, §89.409 requires a licensee to return its license certificate in the event of reissuance of a license. When this section was adopted, it was based on the assumption that the OCCC would issue a paper license certificate. Because the OCCC now issues licenses through an online system (ALECS), this section is no longer necessary.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of

administering the rules. The proposed amendment to §89.310 would increase the volume-based portion of the annual property tax lender license fee from \$0.03 to \$0.05 per \$1,000 advanced. In the last five years, the OCCC received an average of \$4,910.63 per year for the volume-based fee from property tax lenders. Increasing the volume-based fee from \$0.03 to \$0.05 per \$1,000 would increase the revenue from the fee by approximately 67%. This suggests that if the proposed rule changes are adopted, the OCCC would receive additional revenue of approximately \$3,273.75 per year for the first five fiscal years the rule changes are in effect. The rule changes will not affect costs to the state. Ms. Diamond has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will ensure that property tax lender licensees pay an appropriate share of license fees.

The OCCC anticipates some costs for property tax lenders required to comply with the rule changes as proposed, due to the adjustment to the annual license fee in §89.310. Of the 70 licensed property tax lenders that filed annual reports for calendar year 2020, 39 reported no property tax loans made, and would not be affected by the proposal. For the other 31 companies, the OCCC anticipates that the average fee increase would be approximately \$90. Of these companies, the median dollar amount of loans made in 2020 was approximately

\$1.5 million, corresponding to a \$30 fee increase under the proposal. Any fee increase would be limited by current §89.310(g)(3), which effectively limits the volume-based fee to \$600 per active licensed location.

The OCCC anticipates that the proposed rule changes will have some economic impact on small businesses and micro-businesses. The OCCC estimates that all or nearly all of the currently licensed property tax lenders are small or micro-businesses. Therefore, the OCCC estimates that approximately 31 small businesses or micro-businesses will experience an economic impact from the proposed change. As discussed earlier, the OCCC anticipates that the 31 affected businesses would experience an average annual fee increase of approximately \$90. The OCCC considered potential alternatives, including a smaller increase to the volume-based fee, eliminating the \$1,200 maximum for the annual fee, and an adjustment to the \$600 fixed fee. However, the OCCC determined that these alternatives would not satisfy the statutory objective of ensuring that license fees cover the cost of administering Texas Finance Code, Chapter 351. The OCCC believes that adjusting the volume-based fee is an appropriate way to minimize the impact on small businesses and micro-businesses, because the impact will be smaller for businesses making lower dollar amounts of loans. The OCCC does not anticipate an adverse economic effect on rural communities apart from other effects described in this paragraph.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing

employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed amendment to §89.310 requires an increase in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would not expand an existing regulation. The proposal would limit current §89.405 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposal would repeal current §89.409, relating to license reissuance. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov). To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance

Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351.

*Chapter 89. Property Tax Lenders*

*Subchapter C. Application Procedures*

*§89.310. Fees*

(a) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee not to exceed \$600; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount not to exceed \$0.05 [~~\$0.03~~] per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 in accordance with the most recent annual report filing required by Texas Finance Code, §351.164.

(2) An annual assessment fee not to exceed \$250 is required for each inactive license.

(3) The maximum annual assessment fee for each licensed entity shall not average more than \$1,200 per active licensed location.

*Subchapter D. License*



*§89.405. Denial, Suspension, or Revocation Based on Criminal History*

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and

has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 351, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions, property tax lending, or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; ~~and~~

(D) the relationship of the crime to the ability or ~~;~~ capacity ~~[-or-fitness]~~ required to perform the duties and discharge the responsibilities of a licensee; and

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; ~~and~~

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) [(F)] evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation ~~[from one or more of the following:]~~

~~[(i) — prosecution, — law enforcement, and — correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(ii) the sheriff or chief of police in the community where the person resides; and]~~

~~[(iii) other persons in contact with the convicted person].~~

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) and (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of

mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

(1) ~~[(2)]~~ a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3) ~~§53.021(a)(3)-(4)~~;

(2) ~~[(3)]~~ errors or incomplete information in the license application;

(3) ~~[(4)]~~ a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

(4) ~~[(5)]~~ any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1) and §351.156.

**{{Section 89.409 will be repealed.}}**

~~§89.409. License Reissuance~~

~~[In the event of reissuance of a license for any reason, the licensee must return to the~~

~~OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g., lost, destroyed).]~~

### **Certification**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 20, 2021.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner

**C.**

**Department of Savings and  
Mortgage Lending**

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## C. Department of Savings and Mortgage Lending

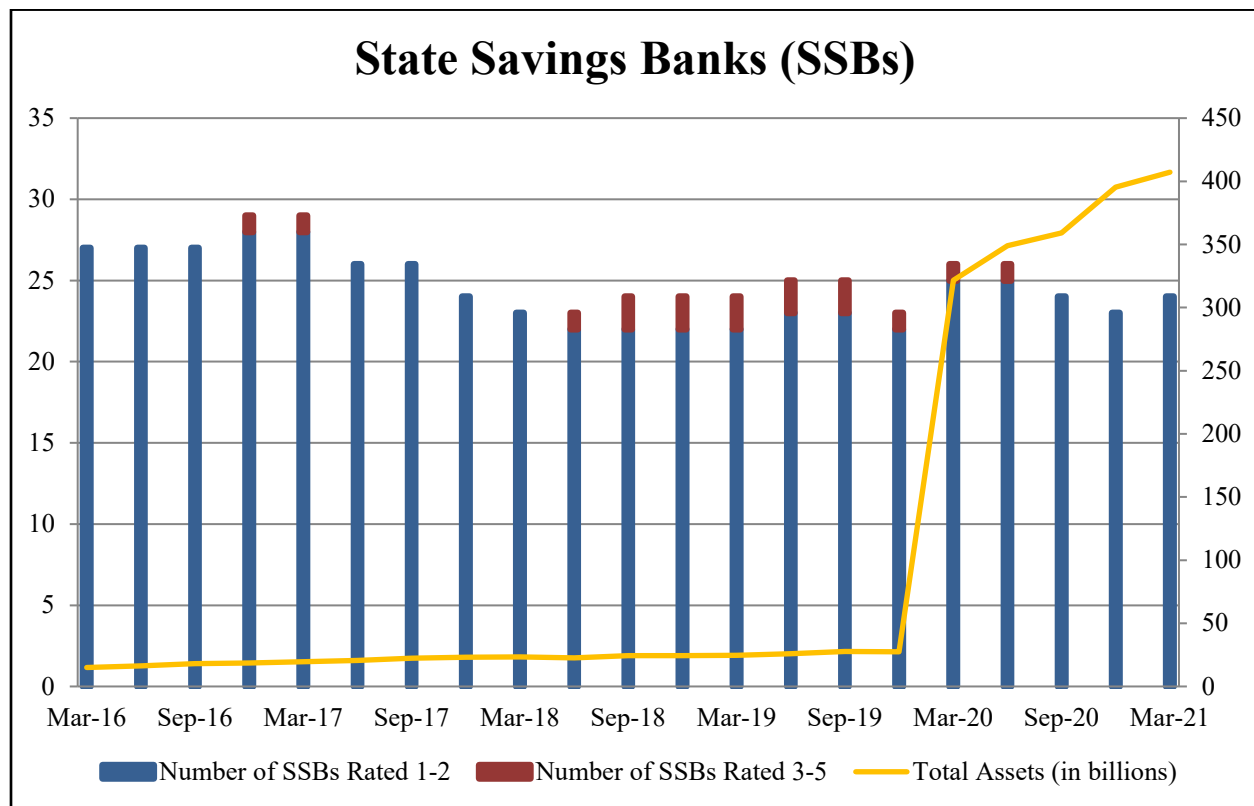
1. **Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities**

### a) Thrift Regulation Division Activities

#### Industry Status

The Department continues to monitor various local, state, and national data sources to understand best the risks facing the industry and individual savings banks.

The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry consists of 24 state savings banks with assets totaling \$407.2 billion as of March 31, 2021. The industry remains sound with all banks being well rated. As of June 30, 2021, one formal supervisory action remains in place.



#### Thrift Examination Activity Report

Due to COVID-19, thrift examinations continue to be conducted off-site. On-site activities are being offered by SML. If any on-site activities are conducted, safety protocols will be followed.

#### Thrift Supervision Activity Report

Thrift Supervision section continues to receive and process various requests for approval, including branch, subsidiary, and holding company applications.

An application to reorganize Mineola Community Mutual Holding Company from a mutual to stock form of ownership was received from Mineola Community Bank, SSB, on February 9, 2021, was approved April 26, 2021, and was effective July 14, 2021.

An application to charter a Texas savings bank to be named Cornerstone Capital Bank, SSB, Houston, and an application to merge The Roscoe State Bank, Roscoe, Texas, with and into Cornerstone Capital Bank, SSB, were received on June 12, 2021, and are under review.

### **Outreach and Training**

Supervisory Financial Examiner Susanna Blevins attended the virtual FFIEC: Fundamentals of AML/CFT Virtual Currency Examinations Seminar on June 16-17, 2021.

Deputy Commissioner Trotti attended the Fintech: A Bridge to Economic Inclusion on June 29, 2021.

Commissioner Jones conducted the Emerging Issues call with state savings banks on July 13, 2021.

Deputy Commissioner Stephany Trotti attended the groundbreaking for Texas Bankers Association's new building on July 20, 2021, and the Texas Bankers Association 2021 Texas Tour Luncheon in San Antonio on July 21, 2021.

The 14th Annual Thrift Industry Day will be held in person at the AT&T Executive Education Conference Center in Austin, Texas, and via virtual platform on September 9, 2021.

### **b) Mortgage Regulation Division Activities**

#### **Industry Status**

<b>License/Registration Type</b>	<b>Approved Count as of</b>		<b>% Change</b>
	<b>07/31/2020</b>	<b>07/31/2021</b>	
Mortgage Banker	412	427	3.64%
Mortgage Company	1,620	1,830	12.96%
Residential Mortgage Loan Servicer	207	220	6.28%
Independent Contractor Company	190	229	20.53%
Credit Union Subsidiary Organization	3	3	0.00%
Auxiliary Mortgage Loan Activity Company	3	4	33.33%
Financial Services Company	1	0	-100.00%
<b><i>Subtotal Entity Licenses/Registrations</i></b>	<b>2,436</b>	<b>2,713</b>	<b>11.37%</b>
Mortgage Banker Branches	3,227	3,830	18.69%
Mortgage Company Branches	877	1,099	25.31%
Credit Union Subsidiary Organization Branches	2	2	0.00%
<b><i>Subtotal Branch Licenses/Registrations</i></b>	<b>4,106</b>	<b>4,931</b>	<b>20.09%</b>
Mortgage Loan Originator	31,486	43,000	36.57%
<b><i>Subtotal Individual Licenses</i></b>	<b>31,486</b>	<b>43,000</b>	<b>36.57%</b>
<b><i>zTotal Count of Licenses/Registrations</i></b>	<b>38,028</b>	<b>50,644</b>	<b>33.18%</b>



### **Licensing Activity Report**

From July 31, 2020, to July 31, 2021, the Department has approved: (1) 277 entity licenses/registrations, (2) 825 branch locations, and (3) 11,514 residential mortgage loan originators.

For the third quarter of FY2021, the Department processed 5,269 applications.

### **Mortgage Examination Activity Report**

From September 1, 2020, to June 30, 2021, the Department conducted a total of 333 examinations covering 5,148 individual licensees. The number of examinations is lower when compared to the same reporting period in fiscal year 2020; however, the number of individual licensees covered is higher by approximately 24%. 43% (or 143) of all examinations conducted were first-time examinations of newly licensed entities. The examinations continue to identify various degrees of non-compliance involving issues related to unlicensed activity, unauthorized activity, the issuance of non-compliant Conditional Qualification/Conditional Approval Letters, and non-compliant social media advertisements.

### **Outreach and Training**

On June 24, 2021, the Department of Savings and Mortgage Lending was re-accredited for the second time by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) under the CSBS/AARMR Mortgage Accreditation Program. The Department will again be subject to re-accreditation in calendar year 2026. The Department has been accredited under the CSBS/AARMR Mortgage Accreditation Program for over 10 years.

Commissioner Jones and Director of Mortgage Regulation William Purce spoke on topics of interest to the North Texas Association of Mortgage Professionals on July 14, 2021, and to the Greater Houston Association Mortgage Professionals on July 20, 2021.

### **c) Operations Division Activities**

#### **Risk Management**

Effective July 1, 2021, the Department transitioned from a mandatory teleworking program due to COVID to a standard teleworking program. Participation in the standard teleworking program is optional and has to be requested by each employee. All requests are subject to multi-level review and approval. Under the program, each section is required to have sufficient in-office coverage daily.

If any office staff member tests positive for or is exposed to COVID, measures are taken according to the circumstances.

Mortgage and thrift examination field staff continue to perform off-site examinations; however, on-site visits are offered at a regulated entity's request.

The management team continues to monitor the pandemic situation and to maintain communication with staff as needed.

#### **Accounting, Budget, and Financial Reporting**

Staff has closed out the third quarter of fiscal year 2021 and finalized the proposed budget for fiscal year 2022. Preparations for closing out fiscal year 2021 and opening fiscal year 2022 have begun.

CAPPS Implementation – User Acceptance Testing for CAPPS Financials is completed. Soft Go Live is scheduled for August 9, 2021, and full Go Live for September 3, 2021.

Preparations for deployment of CAPPS HR/Payroll are scheduled to begin on September 9, 2021.

Legislative Activity – Staff is reviewing Special Session bills for fiscal impact on the agency and the regulated industries.

### **Audit**

The Department's annual internal audit report has been completed by Garza/Gonzalez and can be found elsewhere in this packet.

### **Human Resources**

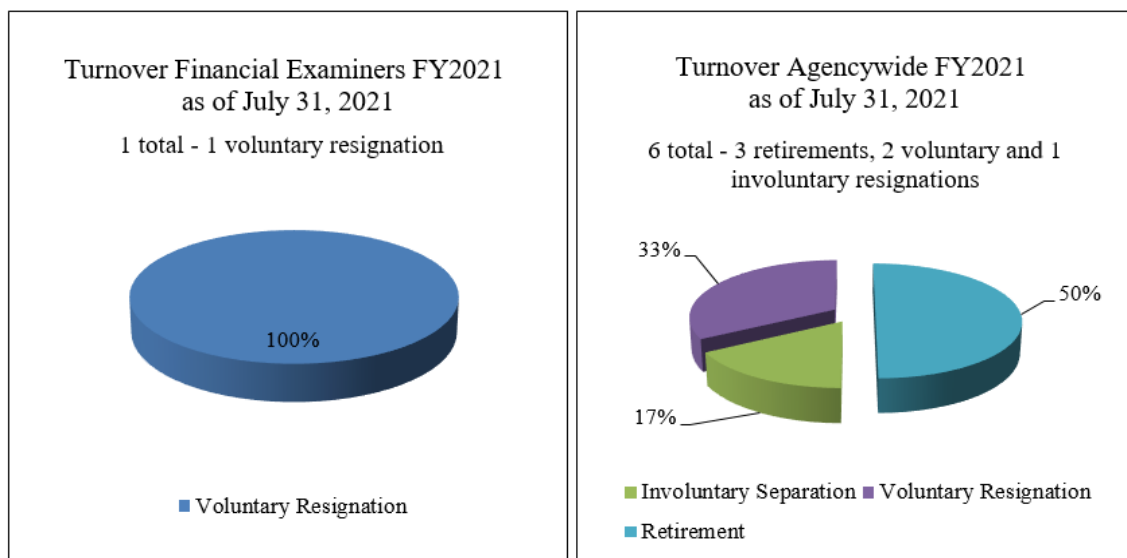
As of August 9, 2021, the Department was staffed at 58 regular full-time and one part-time employees. During the month of June, the Department had two separations - one Investigator and one Accountant. In the first days of August, two new employees joined the Department – one Accountant and one Purchaser.

The Department is utilizing the services of four temporary workers – one Editor, one License and Permit Specialist, and one Investigator.

Below is the status of the Department's vacancies:

Vacancy Status	
Purchaser III/IV	Filled
Accountant II/III	Filled
Financial Examiner V – Thrift – 2	Collecting and reviewing applications, interviewing candidates
Financial Examiner VI/VII – Thrift - 3	
Attorney III/IV - Thrift	
License and Permit Specialist I/II - 2	
License and Permit Specialist II/III – 2	FC Search Committee accepting applications
Commissioner	

Turnover Charts as of July 31, 2021



**Department of Savings and Mortgage Lending**  
**Actual Performance for Output Measures**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	
<b>Output Measures-Key</b>					
<b>1-1-1 Thrift Safety and Soundness</b>					
<b>1. Number of State Chartered Savings Institution Examinations Performed</b>					
<b>Quarter 1</b>	16	4	4	25.00%	
<b>Quarter 2</b>	16	6	10	62.50%	*
*The Department examines state chartered savings banks jointly with the FDIC and FRB, based on a priority schedule. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
<b>Quarter 3</b>	16	2	12	75.00%	
<b>2-1-1 Mortgage Regulation</b>					
<b>1. Number of Applications Processed</b>					
<b>Quarter 1</b>	8,600	2,317	2,317	26.94%	
<b>Quarter 2</b>	8,600	3,521	5,838	67.88%	*
<b>Quarter 3</b>	8,600	5,269	11,107	129.15%	*
*The Department received higher than expected number of applications; therefore the number of applications processed was affected in the same manner.					
<b>2. Number of Licensees Examined</b>					
<b>Quarter 1</b>	5,900	1,670	1,670	28.31%	
<b>Quarter 2</b>	5,900	2,052	3,722	63.08%	*
*During the second quarter, several larger entities were examined.					
<b>Quarter 3</b>	5,900	1,025	4,747	80.46%	*
*During the third quarter, five mid-size mortgage entities examinations were completed, which accounted for 43.6% of the total number of licensees examined for the period. The Department anticipates exceeding the established goal for the year.					
<b>3-1-1 Consumer Responsiveness</b>					
<b>1. Number of Complaints Closed</b>					
<b>Quarter 1</b>	1,000	253	253	25.30%	
<b>Quarter 2</b>	1,000	239	492	49.20%	
<b>Quarter 3</b>	1,000	463	955	95.50%	*
*Increased volume of complaints received in FY21 over FY20 paired with increased investigations staff led to a higher volume of complaints closed.					

\* Varies by 5% or more from target.

## **d) Legal Division Activities, including Consumer Complaints and Gift Reporting**

### **Consumer Complaints Activity Report**

During June and July 2021, the Department received 130 and 109 complaints, respectively. The average number of complaints received during the preceding months was 153 per month.

Fourth quarter data for FY2021 will be available at the October meeting of the Finance Commission.

### **Legal and Enforcement Activity Report**

#### **Enforcement Orders**

During June and July 2021, the Commissioner issued four orders related to violations cited during company examination audits: two formal advisory letters, one Cease and Desist Order, and one Order to Take Affirmative Action. Three of these orders imposed an administrative penalty for the violations cited during the audit.

During June and July 2021, the Commissioner issued six orders related to complaint investigations: one Agreed Order, one formal advisory letter, one Order to Take Affirmative action, and three Orders to Cease and Desist. Four of these orders imposed an administrative penalty. The recipient of one of these orders has requested an appeal.

#### **Recovery Fund Applications**

The Department received two applications for the recovery fund during June and July 2021 - one is currently under investigation and one was denied.

#### **Contested State Office of Administrative Hearings (SOAH) Cases**

None

#### **Litigation**

Case No. 19-31300-HMC *In Re: John Hoang Trien* and Adversary No. 20-03001 *State of Texas v. John Hoang Trien* pending before the U.S. Bankruptcy Court for the Western District of Texas, El Paso Division.

The Department sought to enforce past administrative cease and desist orders (issued for unlicensed residential loan origination and unregistered residential loan servicing activity), by enlisting the services of the Texas Attorney General's Office. The subject John Trien, however, filed a Chapter 11 bankruptcy proceeding. The State of Texas continued its efforts by filing an Adversary Proceeding (lawsuit within the bankruptcy) against Mr. Trien. Bankruptcy Judge Christopher Mott, on the Motion of the United States Trustee's Office, converted the Chapter 11 bankruptcy to a Chapter 7 bankruptcy. This case is now in liquidation not reorganization. In May 2020, the State of Texas filed a motion to amend its adversary complaint against Mr. Trien, which was granted by the court. Within the adversary proceeding Mr. Trien had also filed a motion to strike the amended complaint, as well as a motion for summary judgment and such motions were denied by the court during May 2020. There have been numerous discovery battles recently. Trien's deposition and several others were taken in September 2020. On November 9, 2020, the Parties participated in a mediation and have agreed to settle all matters in controversy, subject to final Division and Executive Office approval. Mr. Trien and his counsel have agreed to permanent injunctive terms; consumer damages totaling \$197,513 (\$142,513 of which will be deemed non-dischargeable); civil penalties totaling \$400,000, (\$75,000 of which will be deemed non-dischargeable); and attorneys' fees of \$150,000 (\$75,000 of

which will be deemed non-dischargeable). The injunctive terms will include provisions that prohibit Mr. Trien from originating or servicing residential mortgage loans. The Agreed Final Order and Permanent Injunction was approved on June 16, 2021, by the U.S. Bankruptcy Court.

Case No: D-1-GN-20-004218 *State of Texas v. Peter Wagner*

The Department had entered into a settlement agreement, whereby Mr. Wagner was to make certain restitution payments to consumers for his unlicensed residential loan modification activity. In May 2020, Mr. Wagner defaulted on his installment payments and the department asked the Texas Attorney General's Financial Litigation and Charitable Trusts Division to reduce the agreement to a district court judgment. The lawsuit was filed on August 12, 2020. Defendant was served and filed his answer. Discovery was exchanged. The Attorney General filed a Motion for Summary Judgment which was heard on March 8, 2021, and subsequently granted by court order dated May 18, 2021. Thereafter in June 2021, Wagner timely filed a motion for a new trial which has not yet been addressed by the court. Should the district court not rule on the motion by August 25, 2021, the motion would be deemed denied in accordance with Tex. R. Civ. P. 329b(c).

### Public Information Requests

During June and July 2021, the Department received and responded to public information requests, none of which were forwarded to the Attorney General's Office for a ruling.

### Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
Chapter 80, Texas Residential Mortgage Loan Companies, Subchapter B, Licensing, Resulting from Rule Review	Adoption of amendments, new rules, and repeals	October 2021
Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, Subchapter B, Licensing, Resulting from Rule Review	Adoption of amendments, new rules, and repeals	October 2021
Chapter 80, Texas Residential Mortgage Loan Companies	Adoption of amendments, new rules, and repeals	October 2021
Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators	Adoption of amendments, new rules, and repeals	October 2021
Chapter 52, Department Administration	Adoption of new rules	October 2021
7 TAC §76.95, Fee for Special Examination or Audit	Adoption of new rule and repeal	October 2021
Rules implementing new Finance Code Chapter 159, Wrap Mortgage Loan Financing	Proposed new rules	October 2021

### Gift Reporting

None.

#### **e) Legislative Activities**

The following are bills filed during Special Session 1 that could impact the Department or the regulated industries:

HB71 – (Rep. Schofield) This bill adds Chapter 2010 to the Government Code to provide that a business that is forced to close due to a government's action, such as a declared disaster that effectively closes the business due to restrictions, is entitled to compensation from the government.

HB173 – (Rep. Vasut) Relating to state and local government responses to disasters. This bill would amend Section 418.004 of the Government Code to provide that, among other things, a business whose operation is restricted during a state of disaster declared by the governor cannot be assessed licensing or other fees while their business is restricted. Also, if they paid a fee in advance, they are entitled to a prorated refund for the time when they were unable to operate due to the order.

**2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Subchapter B, Concerning Licensing, Resulting from Rule Review.**

**PURPOSE:** The purpose of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 80, Subchapter B is to implement changes resulting from the Department's periodic review of its rules contained in Chapter 80, conducted pursuant to Government Code §2001.039. An explanation and a justification for the amendments, new rules, and repeals is contained in the proposed preamble for the rule proposal.

**RECOMMENDED ACTION:** The Department requests that the Finance Commission approve the amendments, new rules, and repeals for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve for publication and comment the proposed amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 80, Subchapter B.

**PROPOSED REPEALS, NEW RULES, AND AMENDMENTS**  
**7 TAC CHAPTER 80, SUBCHAPTER B**  
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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER B. LICENSING

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rules in 7 Texas Administrative Code (TAC) Chapter 80, Subchapter B: §§80.102 - 80.104 and 80.107. The commission further proposes new rules concerning the same or similar subject matter in 7 TAC Chapter 80, Subchapter B: §§80.102, 80.105, and 80.107. The commission further proposes amendments to existing rules in 7 TAC Chapter 80, Subchapter B as follows: §80.106. This proposal and the rules as repealed, amended, or added as new rules by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The proposed rules were identified during the department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.

*Changes Concerning Licensing Procedures*

The department licenses residential mortgage loan companies. The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The proposed rules, if adopted, would make various changes to clarify and set forth in rule various procedures utilized by the department in licensing residential mortgage loan companies. The proposed rules, among other things: (i) clarify how a mortgage company goes about sponsoring individual residential mortgage loan originators and its responsibility for supervising such originators; (ii) clarify the role of the individual residential mortgage loan originator appointed as the qualifying individual for purposes of Finance Code §156.002, including requiring the consent of such individual to be appointed; and (iii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a deficiency so as to enable the licensed mortgage company to continue to conduct regulated activities while the deficiency is resolved.

*Changes Concerning License Records*

The proposed rules, if adopted, would make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed



**PROPOSED REPEALS, NEW RULES, AND AMENDMENTS**  
**7 TAC CHAPTER 80, SUBCHAPTER B**  
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mortgage company to update such records; and the department's procedures for contacting a licensed mortgage company using the contact information derived from such records. The proposed rules, among other things: (i) expand existing requirements concerning a mortgage company updating and keeping current in the NMLS system various information associated with its license (contact information, information concerning its owners, etc.) by requiring that the mortgage company update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a licensed mortgage company from allowing an individual residential mortgage loan originator to act on its behalf prior to becoming sponsored of record by such mortgage company in the NMLS system; (iii) set forth in rule procedures for the department to contact a mortgage company utilizing the contact information designated by the licensed mortgage company; and (iv) impose a new requirement providing that a licensed mortgage company must monitor the email address it has designated in the NMLS system for purposes of receiving correspondence or other notices from the department.

*Other Modernization and Update Changes*

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 81.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state as a result of enforcing or administering the proposed rules.

**Public Benefits**

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand.

**Probable Economic Costs to Persons Required to Comply with the Proposed Rules**

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

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**7 TAC CHAPTER 80, SUBCHAPTER B**  
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**One-for-One Rule Analysis**

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

**Government Growth Impact Statement**

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning License Records create a new rule requirement requiring a licensed mortgage company to monitor the email address it has designated in its NMLS license records. The proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning License Records expand an existing rule requirement by expanding the types of information a change for which requires the licensee to update its license records in NMLS, including imposing a time period of ten days following a material change in such information to make such changes; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

**Local Employment Impact Statement**

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

**Fiscal Impact on Small and Micro-Businesses, and Rural Communities**

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

**Takings Impact Assessment**

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

**Public Comments**

**PROPOSED REPEALS, NEW RULES, AND AMENDMENTS**  
**7 TAC CHAPTER 80, SUBCHAPTER B**  
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Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.



**7 TAC §§80.101, 80.102, 180.105 - 80.107**

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §80.100(g) is also proposed under the authority of, and to implement, Finance Code §156.210.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.101. Sponsorship of Originator; Responsibility for Originator's Actions.

(a) Sponsorship Required. A mortgage company acts by and through one or more originators who must be sponsored by the mortgage company in NMLS. In order to sponsor an originator, the mortgage company must first register a relationship with the originator in NMLS. Once such relationship has been registered, the mortgage company may then file a request in NMLS to establish sponsorship of the originator. An originator must make corresponding license record amendments in NMLS in order to establish such sponsorship, as provided by this section. Sponsorship is not effective until the sponsorship request has been reviewed and approved by the Department. A mortgage company must not allow an individual to act on its behalf in the capacity of an originator until such sponsorship has been established and is effective.

(b) Responsibility for Originator's Actions. By sponsoring an originator, or otherwise allowing an individual to act on its behalf in the capacity of an originator, that mortgage company and the Qualified Individual for the mortgage company each assumes responsibility for the actions of such originator or individual acting in the capacity of an originator. As provided by Tex. Fin. Code § 156.201, all violations of law by an originator or individual acting in the capacity of an originator are deemed to be attributable and imputed to the mortgage company sponsoring the originator or for which the individual acting as an originator was allowed to act, and the Commissioner may seek disciplinary action against the mortgage company, the Qualified Individual for the mortgage company, and the originator simultaneously for the same conduct giving rise to the alleged violation. As a result, a mortgage company and its Qualified Individual are both charged with knowledge of and must ensure compliance by their sponsored originators with the requirements of

**PROPOSED REPEALS, NEW RULES, AND AMENDMENTS**  
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Finance Code Chapters 157 and 180, and the requirements of the Department's rules pertaining to originators, contained in Chapter 81 of this title (relating to Mortgage Bankers and Residential Mortgage Loan Originators).

(c) Termination of Sponsorship. Sponsorship may be terminated by either the sponsoring mortgage company or the sponsored originator. If sponsorship is terminated, the party terminating the sponsorship must immediately make a license record amendment in NMLS notifying the Department that the sponsorship has been terminated, as provided by Tex. Fin. Code §156.211 and §157.019.

§80.102. Qualified Individual.

(a) Qualified Individual Required. A mortgage company must appoint at least one originator to be the mortgage company's qualifying individual for purposes of Tex. Fin. Code §156.002 (Qualified Individual). As provided by Tex. Fin. Code § 156.002, the Qualified Individual is a personal representative of the mortgage company and is deemed to have the authority to bind the mortgage company concerning its operations in Texas. In order to serve as the Qualified Individual, the licensee must hold his or her individual license in a status which enables him or her to engage in regulated activities with the license, and must be sponsored by the mortgage company for which he or she seeks to serve as Qualified Individual. A mortgage company may appoint more than one originator as Qualifying Individual. If a mortgage company appoints more than one originator to serve as Qualified Individual, each such originator is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or individuals otherwise allowed to act as originator on its behalf.

(b) Consent Required. The appointment of the Qualified Individual must be consented to by the originator. The originator must acknowledge and confirm his or her consent by making a corresponding license record amendment in NMLS to reflect such appointment, and must be made using the appropriate form prescribed by NMLS.

§80.105. Fees.

(a) License fees will be established by the Commissioner in accordance with Finance Code Chapter 156. The amount of the fees may be modified on not less than 30 days' advance notice posted on the Department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

(d) For examinations that are conducted outside of Texas, the Commissioner may collect reimbursement of actual expenses. Actual expenses incurred will be in compliance with the Department's policies and procedures.

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*§80.106. Renewals.*

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through NMLS ~~[the Nationwide Mortgage Licensing System and Registry]~~ together with ~~[the]~~ payment of the applicable renewal application fee; and

(2) a determination that the applicant continues to meet the minimum requirements for licensure ~~[license issuance]~~.

(b) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in his or her sole discretion, approve a renewal application with a deficiency the Commissioner deems to be minor in nature so as to allow the licensee to continue conducting regulated activities under the license while the deficiency is resolved. An application approved by the Commissioner with a pending deficiency will be assigned in NMLS the license status code "Approved - Deficient." Approval of the application by this method does not relieve the licensee of the obligation to resolve the deficiency noted. Failure to resolve such deficiency constitutes grounds for the Commissioner to take disciplinary action against the licensee, including suspension or revocation of the license ~~[Renewal of a license may be denied for reasons provided in Finance Code, §156.208]~~.

(c) Supplemental Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license issued -pursuant to Finance Code, Chapter 156 as is deemed by the Commissioner to be -necessary or advisable to determine compliance with the requirements of Finance Code~~[,]~~ Chapter 156.

(d) Reinstatement. The provisions of this section also apply to a person seeking reinstatement of a recently-expired license, as provided by Tex. Fin. Code §156.2081, and should be construed accordingly.

*§80.107. NMLS License Records; Notice to Licensee.*

(a) Amendments to License Records Required. Unless Tex. Fin. Code §156.211 applies and requires additional notice, a mortgage company must amend its NMLS license records (MU1 filing) within 10 days after any material change occurs affecting any aspect of the MU1 filing, including but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to the Department establishing the name change);

(2) the addition or elimination of an assumed name (a/k/a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing the assumed name);

(3) the contact information for the mortgage company listed in the MU1 under "Identifying Information";

**PROPOSED REPEALS, NEW RULES, AND AMENDMENTS**  
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(A) principal address (main address);

(B) mailing address;

(C) phone number;

(D) fax number; and

(E) email address;

(4) the contact information listed under "Resident/Registered Agent";

(5) the contact information listed under "Contact Employee Information;" and

(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(b) Amendments to MU2 Associations Required. A mortgage company must cause the individuals who are required to register an association with the mortgage company (MU2 filing) to do so within the NMLS system and must ensure such associations are amended within 10 days after any material change occurs affecting such associations.

(c) Branch Office License Required. A mortgage company must apply for and obtain a branch office license for each branch office of the mortgage company which must be licensed prior to conducting operations at such office. The application must be submitted through NMLS and must be made on the appropriate form prescribed by NMLS (MU3 filing). A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after closing a branch office.

(d) Notice to Licensee. Service of any correspondence, notification, alert, message, official notice or other written communication issued by the Department will be served on the licensee in accordance with this subsection utilizing the licensee's current contact information of record in NMLS unless another method is prescribed by other applicable law (notice to the originator in a matter submitted to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Tex. Admin. Code §155.105).

(1) Service by Email. Service by email will be made utilizing the email address the mortgage company has designated in its MU1 filing listed under "Identifying Information." Service by email is complete on transmission of the email by the Department to the mortgage company's email service provider, provided, the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company has an ongoing duty and a continuing obligation to monitor such email account including to ensure that correspondence from the Department is not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage company is deemed to have constructive notice of any email correspondence or NMLS system

**PROPOSED REPEALS, NEW RULES, AND AMENDMENTS**  
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notifications sent to the email address it has designated in its MU1 filing listed under "Identifying Information."

(2) Service by Mail. Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the originator by mail and the document communicates a deadline by or a time during which the originator must perform some act, such deadline or time period for action is extended by three days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

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**7 TAC §§ 80.102 - 80.104, 80.107**

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

*§80.102. Sponsorship and Termination Thereof.*

*§80.103. License Record Changes.*

*§80.104. Background Checks.*

*§80.107. Fees.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

**PROPOSED REPEALS, NEW RULES, AND AMENDMENTS**  
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Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

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3. **Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Subchapter B, Concerning Licensing, Resulting from Rule Review.**

**PURPOSE:** The purpose of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 81, Subchapter B is to implement changes resulting from the Department's periodic review of its rules contained in Chapter 81, conducted pursuant to Government Code §2001.039. An explanation and a justification for the amendments, new rules, and repeals is contained in the proposed preamble for the rule proposal.

**RECOMMENDED ACTION:** The Department requests that the Finance Commission approve the amendments, new rules, and repeals for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve for publication and comment the proposed amendments, new rules, and repeals in 7 TAC Chapter 81, Subchapter B.

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER B. LICENSING OF INDIVIDUAL ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rules in 7 Texas Administrative Code (TAC) Chapter 81, Subchapter B: §§81.102 - 81.104, and 81.106 - 81.110. The commission further proposes new rules concerning the same or similar subject matter in 7 TAC Chapter 81, Subchapter B: §§81.102 - 81.104, and 81.106 - 81.111. The commission further proposes amendments to existing rules in 7 TAC Chapter 81 as follows: Subchapter A, §81.2; Subchapter B, §81.101 and §81.105. This proposal and the rules as repealed, amended, or added as new rules by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157. The proposed rules were identified during the department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.

*Criminal Conviction Guidelines*

Pursuant to Occupations Code §53.025, the department, as a licensing authority, is required to issue guidelines relating to the department's administration of Occupations Code Chapter 53, including stating the reasons a particular crime is considered to relate the duties and responsibilities of the license and any other criterion that affects the decisions of the department in administering Occupations Code Chapter 53. The proposed rules, if adopted would implement Occupations Code §53.025 by adopting comprehensive criminal conviction guidelines in rule. The authority for denial of an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. The proposed rules, if adopted, would further outline the commissioner's authority for denial of an application for licensure under the Finance Code based on criminal history, including outlining certain offenses deemed by rule to be grounds for denial under the Finance Code.

*Changes Concerning Licensing Procedures*

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The department licenses individuals to act as residential mortgage loan originators. The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The proposed rules, if adopted, would make various changes to clarify and set forth in rule various procedures utilized by the department in licensing residential mortgage loan originators. The proposed rules, among other things: (i) clarify how a residential mortgage loan originator goes about being sponsored by a mortgage company or mortgage banker so as to engage in regulated activities with the license; (ii) clarify how an individual licensed in another jurisdiction or by a different licensing authority as a residential mortgage loan originator, or registered as a residential mortgage loan originator, may engage in regulated activities under temporary authority while he or she seeks licensure with the department; (iii) with respect to an applicant for licensure who is a military service member or military veteran, clarify that his or her military service, training or education cannot constitute grounds for waiving the pre-licensing examination required by Tex. Fin. Code §180.057, the pre-licensing education training and coursework required by Tex. Fin. Code §180.056, or the continuing education training and coursework required by Tex. Fin. Code §180.060; (iv) with respect to a military spouse, clarify that a military spouse seeking temporary authority to act as a residential mortgage loan originator in Texas must do in conformity with Tex. Fin. Code §180.0511; (v) with respect to pre-licensing education, expand an existing requirement by requiring that such pre-licensing education lapses if the individual does not achieve licensure by limiting the applicable time period from four years to three years; (vi) with respect to pre-licensing education taken in another jurisdiction, impose a new requirement that any portion of such training and coursework which was specific to such jurisdiction does not count towards the minimum hours of required pre-licensing education; (vii) clarify the commissioner's authority to approve a license renewal application with a deficiency so as to enable the licensed individual to continue to conduct regulated activities while the deficiency is resolved (viii) clarify the commissioner's authority to conduct background checks other than through the NMLS system; and (ix) set forth in rule procedures for conducting background checks by the department.

*Changes Concerning License Records*

The proposed rules, if adopted, would make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed residential mortgage loan originator to update such records; and the department's procedures for contacting a residential mortgage loan originator with the contact information derived from such records. The proposed rules, among other things: (i) expand existing requirements concerning a residential mortgage loan originator updating and keeping current in the NMLS system various information associated with his or her license (contact information, disclosures concerning criminal history and financial background, etc.) by requiring that the originator update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a residential mortgage loan originator from engaging in regulated activities prior to becoming sponsored of record in the NMLS system by a mortgage company or mortgage banker; (iii) set forth in rule procedures for the department to contact a residential

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mortgage loan originator utilizing the contact information designated by the residential mortgage loan originator in his or her NMLS license records; and (iv) impose a new requirement requiring a residential mortgage loan originator to monitor the email address he or she has designated in the NMLS system to manage their account with NMLS and receive system-generated messages from NMLS, for purposes of receiving correspondence or other notices from the department.

*Other Modernization and Update Changes*

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 80.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state as a result of enforcing or administering the proposed rules.

**Public Benefits**

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand.

**Probable Economic Costs to Persons Required to Comply with the Proposed Rules**

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

**One-for-One Rule Analysis**

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

**Government Growth Impact Statement**

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For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Licensing Records create a new rule requirement requiring a licensed originator to monitor the email address he or she has designated in its NMLS license records. The proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning License Records expand an existing rule by expanding the types of information a change for which requires the licensee to update its license records in NMLS, including imposing a time period of ten days following a material change in such information to make such changes; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

**Local Employment Impact Statement**

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

**Fiscal Impact on Small and Micro-Businesses, and Rural Communities**

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

**Takings Impact Assessment**

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

**Public Comments**

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

**7 TAC §§81.101 - 81.111**

**Statutory Authority**

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This proposal is made under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §81.108 is also proposed under the authority of Finance Code §157.0132 and Government Code §411.1385. 7 TAC §81.110 is proposed under the authority of, and to implement, Occupations Code §53.025. 7 TAC §81.111 is proposed under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.101. Sponsorship of Originator [~~and Termination Thereof~~].*

(a) Sponsorship Required. In order to act in the capacity of an originator an ~~[An]~~ originator's license must be sponsored in NMLS ~~[the Nationwide Mortgage Licensing System and Registry]~~ by a mortgage company licensed under Finance Code Chapter 156 or a mortgage banker registered under Finance Code Chapter 157. In order to establish sponsorship by a mortgage company or a mortgage banker, the originator must amend his or her NMLS license record (MU4 filing) to reflect employment by such mortgage company or mortgage banker and grant such mortgage company or mortgage banker access to his or her license records in order to allow the mortgage company or mortgage banker to register a relationship with the originator in NMLS. The mortgage company or mortgage banker must make corresponding license record amendments in NMLS in order to establish such sponsorship, as provided by this section, including a request to establish such sponsorship. Sponsorship is not effective until the mortgage company's or mortgage banker's sponsorship request has been reviewed and approved by the Department. A licensee must not act or attempt to act in the capacity of an originator on behalf of a mortgage company or mortgage banker until sponsorship with such mortgage company or mortgage banker has been established and is effective.

(b) Termination of Sponsorship. Sponsorship may be terminated ~~[removed]~~ by ~~[either]~~ the sponsoring mortgage company or mortgage banker, or the originator. If sponsorship is terminated, the party terminating the sponsorship must immediately make a license record amendment in ~~[shall notify the Commissioner through]~~ NMLS notifying the Department ~~[the Nationwide Mortgage Licensing System and Registry]~~ that the sponsorship has been terminated, as provided by Tex. Fin. Code §156.211 and §157.019.

(c) Lapsing of Sponsorship; Inactive Status. Failure by an originator to maintain sponsorship will result in the license automatically reverting to an inactive status, during which time the licensee must not act or attempt to act in the capacity of an originator.

*§81.102. Temporary Authority.*

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(a) Purpose and Applicability. The purpose of this section is to specify how an individual licensed in another jurisdiction or by a different licensing authority as an originator, or registered as an originator may, avail himself or herself of the ability to act in the capacity of an originator in Texas temporarily while he or she seeks licensure with the Department, as provided by Tex. Fin. Code §180.0511.

(b) Application Required. An individual seeking to act under temporary authority must comply with the requirements of Tex. Fin. Code §180.0511. Among other requirements, Tex. Fin. Code §180.0511 requires that the individual file an application with the Department seeking licensure in order to be recognized as having temporary authority. An individual must not act or attempt to act in the capacity of an originator until such application has been filed and the individual has been assigned an NMLS license status code by the Department recognizing such temporary authority. Several status codes reflect and recognize such temporary authority. An individual may confirm his or her temporary authority by reviewing his or her status on the NMLS Consumer Access website ([nmlsconsumeraccess.org](http://nmlsconsumeraccess.org)).

(c) Incomplete Applications. The requirements of §81.100(f) (relating to Licensing - General), providing for the deemed withdrawal of an application that is not complete, are inapplicable to an application for which temporary authority is conferred.

*§81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.*

(a) Purpose and Applicability. The purpose of this section is to specify licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings assigned by Tex. Occ. Code §55.001.

(c) Late Renewal. As provided by Tex. Occ. Code §55.002, an individual is exempt from any increased fee or other penalty for failing to renew a residential mortgage loan originator license in a timely manner if the individual establishes to the satisfaction of the Commissioner that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(d) Expedited License Procedure. As provided by Tex. Occ. Code §55.004 and §55.005, the Department will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military service member, military veteran, or military spouse, if the applicant:

(1) holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

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(2) held a residential mortgage loan originator license in Texas within the five years preceding the date of the application.

(e) Temporary Authority for Military Spouse. Tex. Occ. Code §55.0041 provides that a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing in another jurisdiction with substantially similar licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual sanctioned to act as an originator in another jurisdiction may act under temporary authority in this state (12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). Tex. Occ. Code §55.0041(c) further requires that a military spouse “comply with all other laws and regulations applicable to the business or occupation.” As a result, a military spouse seeking to avail himself or herself of the temporary authority conferred by Tex. Occ. Code §55.0041 must apply for and seek temporary authority in accordance with Tex. Fin. Code §180.0511 and §81.102 of this title (relating to Temporary Authority).

§81.104. Required Education.

(a) Pre-Licensing Education. As provided by Finance Code Chapter 180, an individual applying for licensure must complete the pre-licensing education and coursework as prescribed by the federal S.A.F.E. Mortgage Licensing Act (federal SAFE Act) and approved by NMLS. Such education and coursework must include three hours of instruction relating to applicable state law governing residential mortgage loan origination in Texas.

(b) Lapsing of Pre-Licensing Education. An individual applying for licensure other than a current license holder seeking renewal or the holder of a recently-expired license seeking reinstatement as provided by Tex. Fin. Code §157.016 (an individual seeking an initial license) must have completed the required pre-licensing education and coursework described by subsection (a) within the three years preceding the date of application, otherwise, such individual must retake the pre-licensing education and coursework approved and offered at the time of the application.

(c) Recognition of Pre-Licensing Education Taken in Another Jurisdiction. As provided by Tex. Fin. Code §180.056, the Department will recognize pre-licensing education coursework taken in another jurisdiction subject to the requirements of the federal SAFE Act, provided, it is approved by NMLS for that purpose and otherwise meets the applicable requirements of the federal SAFE Act, and Finance Code Chapter 180. However, the Department will not recognize those hours of pre-licensing education taken in another jurisdiction the content of which was dedicated to education specific to that jurisdiction and that comprised the twelve-hour undefined electives portion of such pre-licensing education program and coursework. An individual may take coursework that is of limited duration and limited in scope to the applicable laws, rules and practice considerations concerning licensure in Texas in order to supplement and remedy a shortfall in



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hours derived from non-recognition of pre-licensing education taken in another jurisdiction as provided by this section.

(d) Continuing Education. As provided by Tex. Fin. Code §180.060 and §81.106 of this title (relating to Renewals), a licensee must complete, on an annual basis, continuing education and coursework approved by NMLS in order to renew the license.

§81.105. Fees.

(a) Fees relating to a license or registration will ~~[shall]~~ be established by the Commissioner in accordance with Finance Code~~;~~ Chapter 157. The amount of the fees may be modified upon not less than 30 days' ~~[days]~~ advance notice posted on the Department's ~~[department's]~~ website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

(d) For examinations that are conducted outside of Texas ~~[out of state]~~, the Commissioner may collect reimbursement of actual expenses. Actual expenses incurred will be in compliance with the Department's ~~[department's]~~ policies and procedures.

§81.106. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through NMLS together with payment of the applicable renewal application fee;

(2) a determination that the applicant continues to meet the minimum requirements for licensure; and

(3) satisfactory evidence provided to the Department that the license holder has completed the continuing education requirements of Finance Code §180.060.

(b) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in her or her sole discretion, approve a renewal application with a deficiency the Commissioner deems to be minor in nature so as to allow the licensee to continue conducting licensed activity while the deficiency is resolved. An application approved by the Commissioner with a pending deficiency will be assigned in NMLS the license status code "Approved - Deficient." Approval of the application by this method does not relieve the licensee of the obligation to resolve the deficiency noted. Failure to resolve such deficiency is grounds for the Commissioner to take disciplinary action against the licensee, including suspension or revocation of the license.

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(c) Supplemental Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license pursuant to Finance Code Chapters 157 and 180 as is deemed by the Commissioner to be necessary or advisable to determine compliance with the requirements of Finance Code Chapters 157 and 180.

(d) Reinstatement. The provisions of this section also apply to an individual seeking reinstatement of a recently-expired license, as provided by Tex. Fin. Code §157.016, and should be construed accordingly.

§81.107. NMLS Records; Notice to Licensee.

(a) Amendments to License Records Required. Unless Tex. Fin. Code §157.019 applies and requires additional notice, an originator licensed by the Department must amend his or her NMLS license record (MU4 filing) within 10 days after any material change occurs affecting any aspect of the MU4 filing, including, but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to the Department establishing the name change);

(2) phone number;

(3) email address (including his or her NMLS account email address, as provided by subsection (d) of this section);

(4) mailing address;

(5) residential history;

(6) employment history; and

(7) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(b) Amendments Requiring New Credit History Check. An originator amending his or her MU4 filing to make a financial disclosure is deemed to have authorized the Department to retrieve a current copy of his or her credit report, as provided by Tex. Fin. Code §157.0132 and this section, and the originator must further amend his or her MU4 filing to formally consent to and request such credit report within the NMLS system.

(c) Amendments Requiring New Criminal Background Check. An originator amending his or her MU4 filing to make a criminal disclosure is deemed to have authorized the Department to perform an additional criminal background check in accordance with Tex. Fin. Code §157.0132 and §81.108 of this title (relating to Background Checks) and the originator must further amend his or her MU4 filing to formally consent to and request such criminal background check within the NMLS system.

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(d) Notice to Licensee. Service of any correspondence, notification, alert, message, official notice or other written communication issued by the Department will be served on the licensee in accordance with this subsection utilizing the licensee's current contact information of record in NMLS unless another method is prescribed by other applicable law (notice to the originator in a matter submitted to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Tex. Admin. Code §155.105.)

(1) Service by Email. Service by email will be made utilizing the email address the originator has designated for use with his or her NMLS account (a/k/a the "NMLS account email address" or "individual account email address"). The NMLS account email address is the same email address to which NMLS-generated notifications are sent. Service by email is complete on transmission of the email by the Department to the originator's email service provider, provided the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The originator has an ongoing duty and a continuing obligation to monitor the email account designated as their NMLS account email address including to ensure that correspondence from the Department or system notifications from NMLS are not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. An originator is deemed to have constructive notice of any email correspondence or NMLS system notifications sent to the email address he or she has designated as his or her NMLS account email address.

(2) Service by Mail. Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the originator by mail and the document communicates a deadline by or a time during which the originator must perform some act, such deadline or time period for action is extended by three days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

§81.108. Background Checks.

(a) NMLS Background Check; Fingerprints Required. An individual applying for an originator's license must provide authorization and fingerprints as prescribed by NMLS in order to conduct a criminal background history check through the Federal Bureau of Investigation.

(b) Background Checks by the Commissioner. Pursuant to Tex. Fin. Code §157.0132 and Tex. Gov't Code §411.1385, the Commissioner is authorized to separately conduct a criminal background history check through the Texas Department of Public Safety (DPS) as determined in the sole discretion of the Commissioner, and may require the applicant to provide fingerprints in order to conduct a fingerprint-based criminal background history check administered by DPS and to pay any applicable fees to DPS or its designated third-party fingerprint processor.

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(c) NMLS Credit Check. An individual applying for an originator's license must provide authorization in the NMLS system for the Department to obtain a copy of the applicant's credit report concerning the applicant's credit history from a credit reporting agency (credit bureau).

(d) Supplemental Information. An individual applying for an originator's license must provide the Department and NMLS information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

§81.109. Procedures for Review of Background Checks.

(a) Purpose and Applicability. This section establishes procedures utilized by the Commissioner and Department staff in performing background checks and reviewing an individual's criminal background and credit history to determine his or her fitness and eligibility for licensure in accordance with Tex. Fin. Code §157.0132.

(b) Supporting Information/Documentation for Criminal Background Check. In order to facilitate his or her review by the Department, an individual with a criminal history seeking to be licensed by the Department, when requested by the Department, must provide the following in support of his or her application for each conviction or other criminal proceeding identified by Department staff:

(1) a detailed explanation, in writing, of the events and circumstances for each conviction or other criminal proceeding required to be self-disclosed in his or her application, signed and dated by the individual seeking licensure; and

(2) copies of court records or other documentation reflecting:

(A) the nature of the criminal offense (including the statutory provisions violated, and the severity or classification of the offense);

(B) the individual's plea (including any terms or other arrangements for the plea);

(C) the conviction (judgment or court order);

(D) the sentence imposed;

(E) any probation or community supervision imposed (including evidence of compliance); and

(F) any other action in the proceeding causing final disposition of the case to be deferred.

(c) Supporting Information/Documentation for Credit History Check. In order to facilitate his or her review by the Department, an individual seeking to be licensed by the Department, when requested by the Department, must provide the following for each financial disclosure made in his

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or her application for licensure and each credit account on his or her credit report identified by Department staff:

(1) a detailed explanation, in writing, of the background and circumstances surrounding each financial disclosure made or credit account identified, signed and dated by the individual seeking licensure;

(2) if a bankruptcy proceeding is disclosed, a copy of the order of discharge from such proceeding, or if the proceeding is ongoing, the current bankruptcy petition, together with the financial schedules filed in the proceeding;

(3) if a judgment or lien is disclosed, a copy of such judgment or lien filing; and

(4) if delinquent child support is disclosed, a copy of the most recent statement of account or other documentation reflecting the current amount due, and if the individual is in a payment plan or has otherwise entered into terms for repayment, a copy of such plan or terms.

(d) Effect of Providing Supporting Documentation. By providing documentation to the Department in accordance with subsections (b) and (c) of this section, the individual certifies that he or she has a good faith belief that such documents are true and correct copies of documents issued by the person that originally created the document that the Department may rely on in making a decision on the application. By providing such supporting documentation, the individual consents to such documentation being admissible at an adjudicative hearing if the Commissioner later seeks to deny the individual's application for licensure resulting in a contested case, and the individual waives any objections concerning the admissibility of such documentation into the administrative record at such adjudicative hearing.

(e) Certified Documents. Notwithstanding subsection (d) of this section, an individual seeking to be licensed by the Department must obtain and provide the Department with certified or exemplified copies of any documents described in subsections (b) and (c) of this section upon written request by Department staff.

*§81.110. Criminal Conviction Guidelines.*

(a) Purpose and Applicability. This section establishes the criteria utilized by the Commissioner and Department staff in reviewing individuals with a criminal history to determine their fitness to be licensed by the Department as an originator. This section implements the requirements of Tex. Occ. Code §53.025, requiring the Department to establish guidelines related to such reviews, including designating particular crimes and offenses which the Department considers to be directly related to the duties and responsibilities of acting as an originator, and that may constitute grounds for denial of licensure. The authority for denial of a license based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. This section also describes the Commissioner's other statutory authority arising from the

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Finance Code for denial of licensure based on an individual's criminal history, including outlining certain offenses deemed by this section to be grounds for denial under the Finance Code.

(b) Ineligibility by Operation of Law. The following individuals are ineligible for licensure as an originator by operation of law due to their criminal history:

(1) an individual who, within the seven years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere to a felony in a court of this state, another state or territory of the United States, a federal court of the United States, or other foreign, or military court, in accordance with Tex. Fin. Code §180.055(a); and

(2) an individual who, at any time, has been convicted of, or pled guilty or nolo contendere to a felony offense involving an act of fraud, dishonesty, breach of trust, or money laundering, in accordance with Tex. Fin. Code §180.055(a).

(c) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission and the Department's Commissioner has determined that the criminal offenses in the following schedule are directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator. The schedule includes those criminal offenses most likely to be encountered by the Department and is made from the perspective of the criminal laws of the State of Texas and of the United States federal government. However, the schedule is not an exhaustive review of all offenses, and does not limit the Department from considering a criminal offense not specifically listed in the schedule. The schedule should be construed to include the substantially similar or functionally equivalent crime of any state or territory of the United States, violations of the Uniform Code of Military Justice, or crimes of a foreign country or governmental subdivision thereof. In determining whether a criminal offense of another jurisdiction is substantially similar and/or functionally equivalent, an inquiry will be made comparing the subject offense with an offense on the schedule to determine whether the subject offense has similar elements, including intent and classification of punishment, and whether the crime would have been punishable had the acts been committed in Texas.

[Figure: 7 TAC §81.109(c)]

(d) Duties and Responsibilities of a Residential Mortgage Loan Originator. An originator acts as the intermediary between the consumer seeking a residential mortgage loan and the underwriter who ultimately determines whether the consumer qualifies for the loan. The originator may assist the consumer in reviewing their income, expenses and credit worthiness to determine whether they will qualify for a loan, and on what terms they might qualify. The originator may assist the consumer in making the loan application, and sometimes directs the consumer to present his or her financial information in the manner to which the lender or underwriter is accustomed. A residential mortgage loan often takes place in the context of a real estate transaction, and as a result, an originator sometimes advises the consumer of his or her financial ability to purchase certain properties, including securing prequalification documents to establish their purchasing power

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while shopping in the marketplace. Once the loan has entered the underwriting process, the originator may assist the consumer in resolving any outstanding conditions of the underwriter to qualify for the loan and obtain approval, including addressing items of concern on a consumer's credit report, immigration/residency status, available cash-on-hand for the transaction, and income which may not be readily established by documentary evidence, such as that of an independent contractor. The originator communicates to the consumer the ever-changing loan terms as prevailing rates and terms in the marketplace fluctuate, and is often a key figure in advising the consumer of when and how they may "lock" the loan in advance of closing and solidify the loan terms. The originator may serve as communications liaison between the consumer and various parties to the transaction, including the lender, the underwriting department or a third-party underwriter, real estate brokers and sales agents, appraisers, insurance providers, closing/settlement agents, and representatives of various taxing authorities. In performing his or her services, an originator is entrusted with, and has access to, sensitive information of the consumer, including his or her social security number, date of birth, immigration/residency status, and all the personal financial details of the consumer including employment, income, assets, and expenses.

(e) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission and the Department's Commissioner has determined the following categories of criminal offenses are directly related to the duties and responsibilities of acting as an originator:

(1) criminal offenses involving fraud, falsification, dishonesty, deception, and breach of trust.

(2) criminal offenses involving theft or embezzlement; and

(3) criminal offenses involving intoxication by drugs or alcohol.

(e) Factors. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in determining whether a criminal offense is directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator, the Commissioner will consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to act as an originator;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the individual had previously been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the license sought by the individual; and

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(5) any correlation between the elements of the crime and the duties and responsibilities of an individual licensed by the Department to act as an originator

(f) In addition to the factors listed in subsection (e) of this section, the Commissioner, in determining whether an individual who has been convicted of or received deferred adjudication for a crime is unfit and should be disqualified from being licensed by the Department, will consider:

(1) the extent and nature of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's last criminal activity;

(4) the amount of time that has elapsed since the individual's release from incarceration;

(5) the conduct and work activity of the individual before and after the criminal activity;

(6) evidence of the individual's rehabilitation or rehabilitative efforts while incarcerated or after release;

(7) letters of recommendation, signed and dated, by a current employer, if the individual is employed, or a previous employer, stating that the employer has specific and complete knowledge of the individual's criminal history and stating the reasons that the employer is recommending that the individual be considered fit to be licensed by the Department, and is not a threat to the public's health, safety and welfare; and

(8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and their character and fitness, with specific and complete knowledge of the individual's criminal history, and able to offer competent information about the nature and extent of the applicant's rehabilitative efforts.

(f) Convictions Considered. The determination of whether a criminal proceeding is considered to have resulted in a conviction for purposes of this section will be made in accordance with Tex. Fin. Code §157.0131, which states that an individual is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the individual;

(2) the individual received probation or community supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the individual's case.

(g) Consideration of Disciplinary Actions. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal convictions, the Commissioner may consider the individual's past history of disciplinary



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actions with the Department, or from another regulatory body or official of another jurisdiction regulating originators or financial services, which may serve as separate grounds for license ineligibility, or as an aggravating factor in favor of disqualifying the individual for licensure.

(h) Consideration of Financial Responsibility, Character and General Fitness. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal convictions, the Commissioner may consider the individual's financial responsibility, and other evidence of character and general fitness, which may serve as separate grounds for license ineligibility, or as an aggravating factor in favor of disqualifying an individual with a criminal history for licensure. The conviction of an offense having a nexus to the duties and responsibilities of an individual licensed by the Department as an originator is indicative of a failure to demonstrate requisite character and general fitness to command the confidence of the community, in accordance with Tex. Fin. Code §180.055(a)(3), and requisite honesty, trustworthiness and integrity in accordance with Tex. Fin. Code §157.012(c).

(i) Offenses Deemed to Involve Fraud or Dishonesty. Any felony criminal offense listed in the schedule contained in subsection (b) of this section which has a nexus to residential mortgage loan origination arising from subsection (d)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Tex. Fin. Code § 180.055(a), and will result in ineligibility by operation of law as provided by subsection (b) of this section.

§81.111. Request for Criminal History Eligibility Determination.

(a) Purpose and Applicability. This section establishes the procedures by which an individual may seek a preliminary review of their eligibility to be licensed by the Department with respect to their criminal history prior to formally applying with the Department for licensure as authorized by Occupations Code Chapter 53. Pursuant to Tex. Occ. Code §53.102, the evaluation contemplated by this section is available to an individual who has reason to believe they are ineligible to be licensed by the Department due to a conviction or deferred adjudication for a felony or misdemeanor offense, and who is enrolled or is planning to enroll in an educational program that prepares an individual to be licensed by the Department. The Commissioner will not offer advisory opinions concerning criminal convictions or sentences that have not actually occurred.

(b) Request for Preliminary Eligibility Determination; Supporting Documentation. The request must be made on the form prescribed by the Commissioner and published on the Department's website. The fee to make a request under this section is \$75.

(d) Review of Request for Preliminary Evaluation. A request made under this section will be reviewed by the Commissioner and Department staff to determine the requestor's eligibility utilizing the same procedures for review of an individual's criminal history when making an application for licensure, and is subject to the Department's criminal conviction guidelines set forth in §81.110 of this title (relating to Criminal Conviction Guidelines). As a result, the requestor,

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in making the request, must list all offenses that actually resulted in a criminal conviction, or that otherwise constitute a criminal conviction for purposes of Tex. Fin. Code. §157.0131 and §81.110 of this title (relating to Criminal Conviction Guidelines). The requestor's incarcerated status that might render the individual ineligible for licensure will be disregarded, however, the Department will consider the implications of the requestor's anticipated release from incarceration.

(e) Determination of Eligibility. Within 90 days of receipt of the fully-completed request, the Department will notify the requestor of their eligibility to receive a license issued under Finance Code Chapters 157 and 180.

(f) Effect of Determination. In the absence of new evidence known but not disclosed by the requestor, or not reasonably available to the Department in consideration of the disclosures made by the requestor, the Commissioner's decision regarding eligibility of the requestor concerning their criminal history will be determinative for purposes of reviewing a subsequent application for licensure from the requestor. However, the Commissioner's decision regarding eligibility will not be determinative to the extent the request for preliminary eligibility determination contained fraudulent or misleading information or supporting documentation or otherwise failed to list a criminal conviction of the requestor that was not otherwise discovered by the Department in investigating the request, regardless of whether or not the requestor was aware of the conviction at the time of the request, and including subsequent conviction(s) received by the requestor. A decision that the requestor is eligible will not be determinative if the requestor is determined to be ineligible for licensure by operation of law as provided by Tex. Fin. Code §180.055(a) and §81.110 of this title (relating to Criminal Conviction Guidelines).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
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Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

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**Figure: 7 TAC §81.110(c)**

**Schedule of Criminal Offenses Determined to be Directly Related to Residential Mortgage Loan Origination**

**State Offenses:**

<b>Offense</b>	<b>Statutory Reference</b>	<b>Nexus to Residential Mortgage Loan Origination  (reference to Department Rule §81.110(d))</b>
Abuse of Official Capacity	Tex. Pen. Code §39.02	(1), (2)
Acceptance of Gift/Honorarium by Public Servant	Tex. Pen. Code §§36.07, 36.08	(1)
Agreement to Abduct Child	Tex. Pen. Code §25.031	(2)
Burglary, in furtherance of theft; Burglary of Vehicle	Tex. Pen. Code §§30.02, 30.04	(2)
Breach of Computer Security	Tex. Pen. Code §33.02	(1), (2)
Bribery	Tex. Pen. Code §36.02	(1)
Bribery, Commercial	Tex. Pen. Code §32.43	(1)
Coercion of Public Servant or Voter	Tex. Pen. Code §36.03	(1)
Counterfeiting Trademark	Tex. Pen. Code §32.23	(1)
Credit Card or Debit Card Abuse	Tex. Pen. Code §32.31	(1), (2)
Credit Card Transaction Record Laundering	Tex. Pen. Code §32.35	(1)
Criminal Attempt, Solicitation, or Conspiracy	Tex. Pen. Code §§15.01, 15.02, 15.03, 15.031	See offense attempted, solicited or conspired
Criminal Simulation	Tex. Pen. Code §32.22	(1)
Criminally Negligent Homicide, arising from intoxication	Tex. Pen. Code §19.05	(3)
Deceptive Business Practices	Tex. Pen. Code §32.42	(1)

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Driving/Boating/Flying while Intoxicated	Tex. Pen. Code §§49.04, 49.05, 49.06, 49.09	(3)
Driving while Intoxicated with Child Passenger	Tex. Pen. Code §49.045	(3)
Drug Offenses	Tex. Health & Safety Code Chs. 481, 482, 483	(3)
Escape from Custody	Tex. Pen. Code §38.06	(1)
Evading Arrest or Detention	Tex. Pen. Code §38.04	(1)
Exploitation of Child/Elderly/Disabled	Tex. Pen. Code §32.53	(1), (2)
False Report of Emergency	Tex. Pen. Code §42.06	(1)
False Report to Law Enforcement	Tex. Pen. Code §37.08	(1)
False Statement to Obtain Property, Credit or Services	Tex. Pen. Code §32.32	(1), (2)
Forgery	Tex. Pen. Code §32.21	(1), (2)
Fraudulent Court Record	Tex. Pen. Code §37.13	(1)
Fraudulent Destruction, Removal, or Concealment of Writing	Tex. Pen. Code §32.47	(1)
Fraudulent Filing of Financing Statement	Tex. Pen. Code §37.101	(1)
Fraudulent or Fictitious Military Record	Tex. Pen. Code §32.54	(1)
Fraudulent Use or Possession of Identifying Information	Tex. Pen. Code §32.51	(1)
Fraudulent, Substandard, or Fictitious Degree	Tex. Pen. Code §32.52	(1)
Fraudulent Transfer of a Motor Vehicle	Tex. Pen. Code §32.34	(1)
Hindering Apprehension or Prosecution	Tex. Pen. Code §38.05	(1)
Hindering Secured Creditors	Tex. Pen. Code §32.33	(1), (2)
Impersonating Lawyer	Tex. Pen. Code §38.122	(1)
Impersonating Public Servant	Tex. Pen. Code §37.11	(1)
Impersonating Peace Officer	Tex. Pen. Code §37.12	(1)
Improper Gift to Public Servant	Tex. Pen. Code §36.09	(1)
Improper Influence	Tex. Pen. Code §36.04	(1)

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Insurance Fraud	Tex. Pen. Code §35.02	(1)
Intoxication Assault	Tex. Pen. Code §49.07	(3)
Intoxication Manslaughter	Tex. Pen. Code §49.08	(3)
Manslaughter, arising from intoxication	Tex. Pen. Code §19.04	(3)
Medicaid Fraud	Tex. Pen. Code §35A.02	(1), (2)
Misapplication of Fiduciary Property or Property of Financial Institution	Tex. Pen. Code §32.45	(1), (2)
Misuse of Official Information	Tex. Pen. Code §39.06	(1)
Money Laundering	Tex. Pen. Code §34.02	(1), (2)
Official Oppression by Public Servant	Tex. Pen. Code §39.03	(1)
Online Impersonation	Tex. Pen. Code §33.07	(1)
Organized Criminal Activity	Tex. Pen. Code §71.02	See underlying offense
Perjury; Aggravated Perjury	Tex. Pen. Code §§37.02, 37.03	(1)
Prohibited Substances and Items in Correctional Facility	Tex. Pen. Code §38.11	(1), (3)
Robbery; Aggravated Robbery	Tex. Pen. Code §§29.02, 29.03	(2)
Securing Execution of Document by Deception	Tex. Pen. Code §32.46	(1), (2)
Simulating Legal Process	Tex. Pen. Code §32.48	(1)
Smuggling of Persons; Continuous Smuggling of Persons	Tex. Pen. Code §§20.05, 20.06	(1)
Stealing or Receiving Stolen Check	Tex. Pen. Code §32.24	(1), (2)
Tampering of Electronic Data	Tex. Pen. Code §33.023	(1)
Tampering with Consumer Product	Tex. Pen. Code §22.09	(1)
Tampering with Governmental Record	Tex. Pen. Code §37.10	(1)
Tampering with Identification Numbers	Tex. Pen. Code §31.11	(1)
Tampering with or Fabricating Physical Evidence	Tex. Pen. Code §37.09	(1)
Tampering with Witness	Tex. Pen. Code §36.05	(1)
Theft	Tex. Pen. Code §31.03	(2)
Theft – Organized Retail Theft	Tex. Pen. Code §31.16	(2)

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Theft of Cargo	Tex. Pen. Code §31.18	(2)
Theft of Petroleum Product	Tex. Pen. Code §31.19	(2)
Theft of Service	Tex. Pen. Code §31.04	(1), (2)
Trafficking of Persons; Continuous Trafficking of Persons	Tex. Pen. Code §§20A.02, 20A.03	(1)
Unauthorized Absence from Corrections Facility	Tex. Pen. Code §38.113	(1)
Unauthorized Acquisition or Transfer of Financial Information	Tex. Pen. Code §31.17	(1), (2)
Unauthorized Use of a Vehicle	Tex. Pen. Code §31.07	(1), (2)
Unlawful Access to Stored Communications	Tex. Pen. Code §16.04	(1), (2)
Unlawful Interception, Use, or Disclosure of Wire, Oral or Electronic Communications	Tex. Pen. Code §16.02	(1)
Unlawful Use of Criminal Instrument or Mechanical Security Device	Tex. Pen. Code §16.01	(1)
Unlawful Use of Pen Register or Trap and Trace Device	Tex. Pen. Code §16.03	(1)

**Federal Offenses:**

<b>Offense</b>	<b>Statutory Reference</b>	<b>Nexus to Residential Mortgage Loan Origination</b>  <b>(reference to Department Rule §81.110(d))</b>
Bankruptcy Fraud	18 U.S.C. §§151-158	(1)
Bribery, Graft and Conflicts of Interest	18 U.S.C. §§201-227	(1)
Conspiracy to Commit Offense or Defraud	18 U.S.C. §§371-373	(1); See also conspired offense, if applicable
Counterfeiting and Forgery	18 U.S.C. §§470-514	(1)

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Customs Fraud	18 U.S.C. §§541-555	(1)
Drug Offenses	21 U.S.C. §§841-865	(3)
False Claims Affecting Government	18 U.S.C. §§281-293	(1)
Fraud, False Statements, Identity Theft	18 U.S.C. §§1001-1070	(1)
Mail Fraud, and other fraud offenses (Wire Fraud, bank fraud, health care fraud, securities/investment fraud)	18 U.S.C. §§1341-1351; 15 U.S.C. §§ 78ff(a), 78j, 77x, 80b-17, 80a-48, 77yyy	(1), (2)
Obstruction of Justice / Tampering with Government Records	18 U.S.C. §§1501-1521; 2071-2076	(1)
Passport/Visa Fraud	18 U.S.C. §§1541-1547	(1)
Perjury	18 U.S.C. §§1621-1623	(1)
Racketeering/RICO Offenses/ Money Laundering Offenses	18 U.S.C. §§1951-1990	(1), (2)
Robbery and Burglary	18 U.S.C. §§2111-2119	(2)
Tax Fraud	26 U.S.C. §§7201-7230	(1), (2)
Theft, Embezzlement	18 U.S.C. §§641-670	(2)

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**7 TAC §§81.102 - 81.104, 81.106 - 81.110**

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.102. Sponsorship and Termination Thereof.*

*§81.103. Request for Criminal History Eligibility Determination.*

*§81.104. Renewals.*

*§81.106. Education Program.*

*§81.107. License Record Changes.*

*§81.108. Background.*

*§81.109. Pre-licensing Education.*

*§81.110. Licensing of Military Service members, Military Veterans, and Military Spouses.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

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4. **Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 80, Concerning Texas Residential Mortgage Loan Companies.**

**PURPOSE:** The purpose of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 80 is to implement Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617), enacted during the 87<sup>th</sup> Legislature (Regular Session), which among other things, eliminated the requirement for a mortgage company or credit union subsidiary organization to maintain a physical office in Texas. The amendments, new rules, and repeals further seek to formalize and clarify existing authority for the employees and sponsored originators of a mortgage company to work remotely. The rule changes further seek to formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the Department. An explanation and a justification for the amendments, new rules, and repeals is contained in the proposed preamble for the rule proposal.

**RECOMMENDED ACTION:** The Department requests that the Finance Commission approve the amendments, new rules, and repeals for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve for publication and comment the proposed amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 80.

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. ~~[TEXAS]~~ RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rule in 7 Texas Administrative Code (TAC) Chapter 80, Subchapter C: §80.206. The commission further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 80, Subchapter C: §80.206. The commission further proposes amendments to existing rules in 7 TAC Chapter 80 as follows: Subchapter A, §80.2; Subchapter C, §80.203 and §80.204; and Subchapter D, §80.300. This proposal and the rules as repealed, amended, or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156).

*Changes Concerning Office Requirements and Remote Work*

During the 87<sup>th</sup> Legislature (Regular Session), Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617) were enacted into law (eff. September 1, 2021) which, among things, amended Finance Code Sections 156.2041 and 156.2042 to eliminate the requirement for a mortgage company or credit union subsidiary organization licensed under Chapter 156 to maintain a physical office in Texas. One stated purpose for HB3617, as reflected by the bill's House Committee Report was to address "a rise in demand for remote working." The proposed rules implement those portions of HB3617 addressing the physical office requirement and further seek to fulfill the stated purpose of HB3617 by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage company to work remotely. The proposed rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the department. The rules, if adopted, would: (i) eliminate use of the term "physical office" throughout Chapter 80 and instead use the terms "main office" and "branch office," terms that are used in Chapter 156; (ii) eliminate existing requirements for a mortgage company to maintain records tied to the now defunct physical office requirement; (iii) create definitions for the terms "administrative office," "branch office," "licensed office," and "main office" for purposes of administering the proposed rules, including to clarify which offices of a mortgage company must be licensed by the department; (iv) clarify that the main office or a branch office must be established by the mortgage company and not a sponsored originator; (v) describe conditions under and parameters by which the employees and sponsored originators of a mortgage company are authorized to work from a remote location; (vi) create a new requirement for a mortgage company to provide appropriate training to its employees

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and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (vii) create a new requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (viii) create a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules; and (xi) create a new requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work from remotely.

#### Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department. However, the proposed rules are intended to formalize and clarify existing requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department.

#### Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of adopting the proposed rules will be to have rules that formalize and clarify in rule the parameters by which the employees and sponsored originators of a mortgage company may work remotely, including requiring training concerning such remote work, and written procedures governing such remote work, thereby ensuring the privacy of those members of the public utilizing the services of a mortgage company, and confidentiality of their personal financial information.

#### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

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William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As related above, the proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department by regulated persons. However, the proposed rules are intended to formalize and clarify existing requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department by regulated persons for a branch office license. The proposed rules related to Changes Concerning Office Requirements and Remote Work require a mortgage company to provide its employees and sponsored originators with training on how to work remotely in an environment conducive and appropriate to consumer privacy, and to maintain written procedures governing such remote work. However, most, if not all, mortgage companies already operate under existing authority for their employees and sponsored originators to work remotely, including existing parameters, presently not formalized in rule, that the mortgage company employ sufficient security protocols to protect consumer information, and to exercise appropriate oversight and supervision over an employee or sponsored originator working remotely. The proposed rules require the mortgage company to adequately train its employees and sponsored originators on conducting such remote work, and to document its procedures governing such remote work. As a result, the proposed rules do not directly impose a cost on regulated persons in order to comply with the proposed rules. A mortgage company may conceivably choose to engage, at some indeterminate cost, a third party to conduct such training or to develop such written procedures concerning remote work by its employees and sponsored originators, however, this potential cost would be at the election of the mortgage company, and is not directly required by the proposed rules.

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency. the proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a

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mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department by regulated persons. However, the proposed rules are intended to formalize and clarify existing requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department by regulated persons for a branch office license; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Office Requirements and Remote Work create a new rule requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work from remotely. The proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or

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by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

**SUBCHAPTER A. GENERAL PROVISIONS**

**7 TAC §80.2**

**Statutory Authority**

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §80.100(g) is also proposed under the authority of, and to implement, Finance Code §156.210.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

*§80.2. Definitions.*

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 156, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §156.002(14) and paragraph (18) ~~[(20)]~~ of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

~~[(2) "Branch office," as used in Tex. Fin. Code §156.2041(a)(4), means any office that is separate and distinct from the mortgage company's principal place of business of record with NMLS, whether located in Texas or not, which conducts mortgage business on residential real estate located in Texas.]~~

(2) ~~[(3)]~~ "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(3) ~~[(4)]~~ "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

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(4) ~~[(5)]~~ "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(5) ~~[(6)]~~ "Control person" means an individual that directly or indirectly exercises control over a mortgage company. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage company, whether through ownership of securities, by contract, or otherwise. Control person includes any person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, is a managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the partnership's capital assets.

(6) ~~[(7)]~~ "Department" means the Department of Savings and Mortgage Lending.

(7) ~~[(8)]~~ "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

(8) ~~[(9)]~~ "Mortgage applicant" has the meaning assigned by Tex. Fin. Code §156.002 and includes a person who contacts a mortgage company or its sponsored originator in response to a solicitation to obtain a residential mortgage loan, and a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(9) ~~[(10)]~~ "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §156.002.

(10) ~~[(11)]~~ "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §156.002.

(11) ~~[(12)]~~ "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §156.002(14), means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

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(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(12) ~~[(13)]~~ "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator." Paragraphs (11) ~~[(12)]~~ and (18) ~~[(20)]~~ of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

(13) ~~[(14)]~~ "Person" means an individual, corporation, company, limited liability company, partnership or association.

~~[(15)] "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.]~~

(14) ~~[(16)]~~ "Qualifying Individual" or "Qualified Individual" has the meaning assigned by Tex. Fin. Code §156.002 in defining "qualifying individual." Additionally, the license held by the Qualifying Individual must be held in a status which authorizes him or her ~~[them]~~ to conduct regulated activities, and the individual sponsored of record in NMLS by the mortgage company for which he or she is acting as ~~[they are]~~ the Qualifying Individual.

(15) ~~[(17)]~~ "Residential Mortgage Loan" has the meaning assigned by Tex. Fin. Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(16) ~~[(18)]~~ "Residential real estate" has the meaning assigned by Tex. Fin. Code §156.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(17) ~~[(19)]~~ "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage company or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the



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mortgage company or sponsored originator posts commercial messages or other content designed to solicit business.

(18) ~~[(20)]~~ "Takes a residential mortgage loan application," as used in Tex. Fin. Code §156.002(14) in defining "residential mortgage loan originator", means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

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**SUBCHAPTER C. DUTIES AND RESPONSIBILITIES**

**7 TAC §§80.203, 80.204, 80.206**

**Statutory Authority**

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

*§80.203. Advertising.*

(a) A mortgage company or sponsored originator that advertises rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.

(b) Any advertisement of residential mortgage loans or for residential mortgage loan origination services which is offered by or through a mortgage company or sponsored originator must conform to the following requirements:

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(1) a mortgage company or sponsored originator may only advertise for such products and terms as are actually available and, if availability is subject to any material requirements or limitations, the advertisement must specify those requirements or limitations;

(2) except as provided in subsections (c) and (d) of this section the advertisement must contain:

(A) the name of the mortgage company followed by the mortgage company's NMLS identification number; and

(B) the name of the sponsored originator followed by the sponsored originator's NMLS identification number;

(3) an advertisement must not make any statement or omit relevant information, the result of which is to present a misleading or deceptive representation to consumers; and

(4) an advertisement must comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan transaction or is otherwise designed to solicit residential mortgage loan ~~[origination]~~ business for the mortgage company or sponsored originator. This includes "flyers," business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection (b)(2) of this section do not apply to:

(1) any advertisement which indirectly promotes a residential mortgage loan transaction and which contains only the name of the mortgage company or sponsored originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value;

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or

(3) signs located on or adjacent to the mortgage company's licensed office as provided by §80.206 of this title (relating to Office Locations; Remote Work) ~~[physical office]~~.

(d) Advertising Directly by a Mortgage Company. The provisions of subsection (b) of this section notwithstanding, a mortgage company may advertise directly to the public and not by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section do not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered,

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or otherwise made by an originator sponsored by the mortgage company will not be considered an advertisement made directly by a mortgage company for purposes of this subsection.

*§80.204. Books and Records.*

(a) Maintenance of Records, Generally. In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each mortgage company or sponsored originator must maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each mortgage company or sponsored originator is required to maintain, at the location specified in their official record on file with the Department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received, the mortgage company must create and maintain a residential mortgage loan file containing, at a minimum:

(A) a copy of the initial residential mortgage loan application (including any attachments, supplements, or addenda thereto), signed and dated by each mortgage loan applicant and the sponsored originator;

(B) a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other documentation evidencing the disposition of the application for a residential mortgage loan;

(C) a copy of the disclosure statement required by Tex. Fin. Code §156.004 and §80.200(a) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate locks or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to mortgage applicants required by Tex. Fin. Code §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

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(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant;

(B) the date of the initial residential mortgage loan application;

(C) a description of the purpose for the loan (e.g., purchase, refinance, construction, etc.);

(D) a description of the owner's intended occupancy of the subject real estate (e.g., primary residence, secondary residence, investment property (no occupancy), etc.);

(E) a description of the disposition of the application for a residential mortgage loan;

(F) the identity of the person who initially funded and/or acquired the residential mortgage loan; and

(G) the full name of the originator and his or her NMLS identification number.

(3) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan [origination] business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage company employees, independent contractors and all others compensated by such mortgage company in connection with the residential mortgage loan [origination] business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

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(E) copies of all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(4) Records Concerning Administrative Offices. A mortgage company must create and maintain a list reflecting any office constituting an “administrative office” of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work).

~~[Records Establishing Physical Office. A mortgage company must create and maintain records establishing its physical office including:~~

~~—~~  
~~(A) records reflecting the names and contact information for persons serving as staff for the mortgage company assisting customers at the physical office; and~~

~~—~~  
~~(B) records reflecting the mortgage company's right to access the physical office and conduct business of the mortgage company at such office (e.g., a lease agreement or deed).]~~

(5) Records Concerning Remote Work. A mortgage company must create and maintain records reflecting its compliance with the requirements for remote work as provided by §80.206 of this title (relating to Office Locations; Remote Work).

(c) A mortgage company and/or sponsored originator must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A mortgage company and/or sponsored originator must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) Production of Records; Disciplinary Action. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may result in disciplinary action including, but not limited to, suspension or revocation of a license.

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(f) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) Records Retention After Dissolution. Within 10 days of terminating operations, a mortgage company must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage company licensed by the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.

§80.206. Office Locations; Remote Work.

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Administrative office" means any office of a mortgage company that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage company conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees or sponsored originators of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i); or

(C) an office or location which performs any combination of activities described by subparagraphs (A) or (B) of this paragraph.

(2) "Branch office" means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees or sponsored originators of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

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(C) an office or location which performs any combination of the activities described by subparagraphs (A) and (B) of this paragraph; or

(D) a "remote location" as defined by this section.

(3) "Licensed office" means a physical office of the mortgage company that is licensed by the Department as its main office or a branch office.

(4) "Main office" means the address the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.

(5) "Remote location" means a location other than a licensed office or an administrative office of the mortgage company from which the employees or sponsored originators of the mortgage company conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage loan applicants. A licensed office of the mortgage company must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage company. A sponsored originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage company and its sponsored originators may conduct business and work from a location other than a licensed office or an administrative office of the mortgage company (remote location) if the mortgage company:

(1) maintains appropriate safeguards for the mortgage company and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

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(4) ensures that consumer information and records of the mortgage company, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

\_\_\_\_\_ (A) the mortgage company and its employees and sponsored originators comply with this section; and

\_\_\_\_\_ (B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a licensed office or administrative office of the mortgage company.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

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**7 TAC §80.206**

**Statutory Authority**

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

*§80.206. Physical Office.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.



**PROPOSED AMENDMENTS, NEW RULE, AND REPEAL**  
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**5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators.**

**PURPOSE:** The purpose of the amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 81 is to formalize and clarify existing authority for the employees and sponsored originators of a mortgage banker to work remotely. The rule changes further seek to formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker such that the office must be registered with the Department. An explanation and a justification for the amendments, new rules, and repeals is contained in the proposed preamble for the rule proposal.

**RECOMMENDED ACTION:** The Department requests that the Finance Commission approve the amendments, new rules, and repeals for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve for publication and comment the proposed amendments, new rules, and repeals in 7 TAC, Part 4, Chapter 81.

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rule in 7 Texas Administrative Code (TAC) Chapter 81, Subchapter C: §81.206. The commission further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 81, Subchapter C: §81.206. The commission further proposes amendments to existing rules in 7 TAC Chapter 81 as follows: Subchapter A, §81.2; Subchapter C, §81.203 and §81.204; and Subchapter D, §81.300. This proposal and the rules as repealed, amended, or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157.

*Changes Concerning Office Requirements and Remote Work*

The proposed rules recognize the growing demand for the employees and sponsored originators of a mortgage banker to work remotely by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage banker to do so. The proposed rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker such that the office must be registered with the department. The rules, if adopted, would: (i) create definitions for the terms "administrative office," "branch office," "main office," and "registered office," for purposes of administering the proposed rules, including to clarify which offices of a mortgage banker must be registered with the department; (ii) clarify that the main office or a branch office must be established by the mortgage banker or mortgage company and not an originator; (iii) describe conditions under and parameters by which the employees and sponsored originators of a mortgage banker are authorized to work from a remote location; (iv) create a new requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (v) create a new requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (vi) create a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules; and (vii) create a new requirement for a mortgage banker to

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maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state as a result of enforcing or administering the proposed rules.

**Public Benefits**

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of adopting the proposed rules will be to have rules that formalize and clarify in rule the parameters by which the employees and sponsored originators of a mortgage banker may work remotely, including requiring training concerning such remote work, and written procedures governing such remote work, thereby ensuring the privacy of those members of the public utilizing the services of a mortgage banker, and confidentiality of their personal financial information.

**Probable Economic Costs to Persons Required to Comply with the Proposed Rules**

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work require a mortgage banker to provide its employees and sponsored originators with training on how to work remotely in an environment conducive and appropriate to consumer privacy, and to maintain written procedures governing such remote work. However, most, if not all, mortgage bankers already operate under existing authority for their employees and sponsored originators to work remotely, including existing parameters, presently not formalized in rule, that the mortgage banker employ sufficient security protocols to protect consumer information, and to exercise appropriate oversight and supervision over an employee or sponsored originator working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further require the mortgage banker to adequately train its employees and sponsored originators on conducting such remote work, and to document its procedures governing such remote work. As a result, the proposed rules do not directly impose a cost on regulated persons in order to comply with the proposed rules. A mortgage banker may conceivably choose to engage, at some indeterminate cost, a third party to conduct such training or to develop such written procedures concerning remote work by its employees and

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sponsored originators, however, this potential cost would be at the election of the mortgage banker, and is not directly required by the proposed rules.

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Office Requirements and Remote Work create a new rule requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely. The proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to

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comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

**Takings Impact Assessment**

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

**Public Comments**

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

**SUBCHAPTER A. GENERAL PROVISIONS**

**7 TAC §81.2**

**Statutory Authority**

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.2. Definitions.*

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 157 and Chapter 180, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §§157.002(6) and 180.002(19), and paragraph (16) [(19)] of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

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(2) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(3) "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

~~[(4) "Criminal Offense" means any violation of any state or federal criminal statute which:~~

~~(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;~~

~~(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;~~

~~(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;~~

~~(D) involves deceiving the public by means of swindling, false advertising or the like;~~

~~(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;~~

~~(F) involves acts of violence or use of a deadly weapon;~~

~~(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or~~

~~(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.]~~

(4) ~~[(5)]~~ "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(5) ~~[(6)]~~ "Department" means the Department of Savings and Mortgage Lending.

(6) ~~[(7)]~~ "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

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(7) ~~[(8)]~~ "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(8) ~~[(9)]~~ "Mortgage banker" has the meaning assigned by Tex. Fin. Code §157.002.

(9) ~~[(10)]~~ "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §157.002.

(10) ~~[(11)]~~ "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002.

(11) ~~[(12)]~~ "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §157.002(6) and §180.002(19) means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(12) ~~[(13)]~~ "Originator" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (11) ~~[(12)]~~ and (16) ~~[(19)]~~ of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

~~[(14)] "Physical office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.~~

~~[(15)] "Recovery Fund" means the fund administered and maintained by the Commissioner for the recovery of actual damages by persons aggrieved by a licensed residential mortgage loan originator, established pursuant to Tex. Fin. Code §13.016.]~~



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(13) [(46)] "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(14) [(47)] "Residential real estate" has the meaning assigned by Tex. Fin. Code §180.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(15) [(48)] "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage banker or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage banker or sponsored originator posts commercial messages or other content designed to solicit business.

(16) [(49)] "Takes a residential mortgage loan application," as used in Tex. Fin. Code §157.002(6) and §180.002(19) in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535



**SUBCHAPTER C. DUTIES AND RESPONSIBILITIES**

**7 TAC §§81.203, 81.204, 81.206**

Statutory Authority

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This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.203. Advertising.*

(a) A mortgage banker or originator that advertises rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.

(b) Any advertisement of residential mortgage loans or for residential mortgage loan origination services which is offered by or through a mortgage banker or originator must conform to the following requirements:

(1) A mortgage banker or originator may only advertise for such products and terms as are actually available and, if availability is subject to any material requirements or limitations, the advertisement must specify those requirements or limitations.

(2) Except as provided in subsections (c) and (d) of this section, the advertisement must contain:

(A) the name of the mortgage banker or mortgage company followed by its NMLS identification number; and

(B) the name of the sponsored originator followed by the sponsored originator's NMLS identification number.

(3) An advertisement must not make any statement or omit relevant information the result of which is to present a misleading or deceptive representation to consumers.

(4) An advertisement must comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan transaction or is otherwise designed to solicit residential mortgage loan [origination] business for the mortgage banker or originator. This includes "flyers," business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection (b)(2) of this section do not apply to:

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(1) any advertisement which indirectly promotes a residential mortgage loan transaction and which contains only the name of the mortgage banker or originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value;

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or

(3) signs located on or adjacent to the mortgage banker's registered office as provided by §81.206 of this title (relating to Office Locations; Remote Work) ~~[or originator's physical office]~~.

(d) Advertising Directly by a Mortgage Banker. The provisions of subsection (b) of this section notwithstanding, a mortgage banker may advertise directly to the public and not by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section do not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage banker will not be considered an advertisement made directly by a mortgage banker for the purposes of this subsection.

*§81.204. Books and Records.*

(a) Maintenance of Records, Generally. In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapters 157 and 180, and this chapter, each originator must maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the Department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received, the originator must create and maintain a residential mortgage loan file containing, at a minimum:

(A) a copy of the initial mortgage loan application (including any attachments, supplements, or addenda thereto), signed and dated by each mortgage applicant and the originator;

(B) a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other documentation evidencing the disposition of the application for a residential mortgage loan;

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(C) for an originator sponsored by a mortgage banker, a copy of the disclosure statement required by Tex. Fin. Code §157.0021 and §81.200(a) of this title; or, for an originator sponsored by a mortgage company, a copy of the disclosure statement required by Tex. Fin. Code §156.004 and §80.200(a) of this title;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate locks or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to mortgage applicants required by Tex. Fin. Code §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant;

(B) the date of the initial residential mortgage loan application;

(C) a description of the purpose for the loan (e.g., purchase, refinance, construction, etc.);

(D) a description of the owner's intended occupancy of the subject real estate (e.g., primary residence, secondary residence, investment property (no occupancy), etc.);

(E) a description of the disposition of the application for a residential mortgage loan;

(F) the identity of the person who initially funded and/or acquired the residential mortgage loan; and

(G) the full name of the originator and his or her NMLS identification number.

(3) General Business Records. General business records include:

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(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan [origination] business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage banker employees, independent contractors and others compensated by such originator in connection with the residential mortgage loan [origination] business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, delegations of underwriting authority, price agreements for goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(4) Records Concerning Administrative Offices. A mortgage banker must create and maintain a list reflecting any office constituting an “administrative office” of the mortgage banker for purposes of §81.206 of this title (relating to Office Locations; Remote Work).

(5) Records Concerning Remote Work. A mortgage banker must maintain records reflecting compliance with the requirements for remote work as provided by §81.206 of this title (relating to Office Locations; Remote Work).

(c) Each originator must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

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(d) Each originator must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) Production of Records; Disciplinary Action. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may result in disciplinary action including, but not limited to, suspension or revocation of a license.

(f) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring mortgage banker or mortgage company maintains the required records. Upon termination of a mortgage banker's sponsorship of an originator, that originator's records must remain with the mortgage banker or be transferred to the new sponsoring mortgage banker. Upon written request from a former originator, a former mortgage banker may release to his or her former originator copies of records relating to residential mortgage loans handled by such former originator.

(h) Records Retention After Dissolution. Within 10 days of terminating operations, a mortgage banker or originator must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage banker registered with the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.

§81.206. Office Locations; Remote Work.

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Administrative office" means any office of a mortgage banker that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage banker conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees or sponsored originators of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

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\_\_\_\_\_ (C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees or sponsored originators act solely in the capacity of a "residential mortgage loan servicer," as that term is defined by Tex. Fin. Code §158.002; or

\_\_\_\_\_ (D) an office or location which performs any combination of activities described by subparagraphs (A)-(C) of this paragraph.

(2) "Branch office" means any office a mortgage banker maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees or sponsored originators of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

\_\_\_\_\_ (B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

\_\_\_\_\_ (C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees or sponsored originators act solely in the capacity of a "residential mortgage loan servicer," as that term is defined by Tex. Fin. Code §158.002;

(D) an office or location which performs any combination of activities described by subparagraphs (A)-(C) of this paragraph; or

(E) a "remote location" as defined by this section.

(3) "Main office" means the address the mortgage banker has listed in its NMLS registration (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore registered with the Department.

(4) "Registered office" means a physical office of the mortgage banker that is registered with the Department as its main office or a branch office.

(5) "Remote location" means a location other than a registered office or an administrative office of the mortgage banker from which the employees or sponsored originators of the mortgage banker conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage banker must register any office constituting the main office or a branch office of the mortgage banker. A mortgage banker must also register any office or location it advertises or promotes to the general public as an office or location at which the

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mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage loan applicants. A registered office of the mortgage banker must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage banker or mortgage company. An originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a location other than a registered office or an administrative office of the mortgage banker (remote location) if the mortgage banker:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

\_\_\_\_\_ (A) the mortgage banker and its employees and sponsored originators comply with this section; and

\_\_\_\_\_ (B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending



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For further information, please call: (512) 475-1535

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**7 TAC §81.206**

**Statutory Authority**

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.206. Physical Office.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

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**6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 52, Concerning Department Administration.**

**PURPOSE:** The purpose of the new rules in 7 TAC, Part 4, Chapter 52 is to establish in rule various processes and procedures governing the recovery fund the Commissioner is required to administer pursuant to Finance Code Section 13.016 and Chapter 156, Subchapter F. The new rules further establish in rule various policies and procedures governing the mortgage grant fund the Commissioner is required to administer pursuant to Finance Code Chapter 156, Subchapter G, arising from the enactment of House Bill 3617 (HB3617) during the 87<sup>th</sup> Legislature (Regular Session). The new rules further establish in rule various policies and procedures governing claims made against the mortgage grant, as provided by Tex. Fin. Code §156.555, also arising from the enactment of HB3617.

**RECOMMENDED ACTION:** The Department requests that the Finance Commission approve the new rules for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve for publication and comment the proposed new rules in 7 TAC, Part 4, Chapter 52.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. DEPARTMENT ADMINISTRATION

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes new rules in 7 TAC Chapter 52, Department Administration. This proposal and the new rules as proposed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 52 generally govern the department's internal processes and procedures including existing rules concerning consumer complaints filed with the department, the resolution of contested by informal settlement conference, and the use of advisory committees as provided by Tex. Fin. Code §13.018. The proposed rules, if adopted, would establish new rules governing certain other internal processes and procedures related to: (i) the recovery fund administered by the department's commissioner (commissioner) under Finance Code Chapter 156, Subchapter F (recovery fund); (ii) the mortgage grant fund administered by the commissioner under Finance Code Chapter 156, Subchapter G (mortgage grant fund); and (iii) claims made against the mortgage grant fund as provided by Tex. Fin. Code §156.555.

*New Rules Concerning the Recovery Fund*

Pursuant to Finance Code §13.016 and Chapter 156, Subchapter F, the commissioner is required to administer and maintain a fund against which persons may make a claim to recover actual out-of-pocket damages incurred because of acts committed by an individual licensed by the department as a residential mortgage loan originator under Finance Code Chapter 157. The proposed rules, if adopted, would: (i) create definitions necessary to administer the recovery fund, derived from similar definitions contained in existing 7 TAC §81.2 (relating to Definitions); (ii) clarify that a person seeking to make a claim against the recovery fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the recovery fund, a claimant must provide the necessary information and documentation necessary to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that a licensed residential mortgage loan originator against whom a claim was made and approved may have an administrative penalty imposed on him or her; and (vi) establish a process and procedure for paying approved claims in the event funds in the recovery fund are unavailable at the time the claim is approved.

*New Rules Concerning the Mortgage Grant Fund*

During the 87<sup>th</sup> Legislature (Regular Session), House Bill 3617 (HB3617) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 156 to create a new Subchapter G, creating a new mortgage grant fund for the commissioner to administer, funded by excess contributions to the recovery fund. The primary purpose of the mortgage grant fund is to promote financial education relating to mortgage loans and to support other statewide financial education, activities, and programs. The proposed rules, if adopted, would: (i) create definitions necessary to administer the mortgage grant fund; (ii) clarify the commissioner's role as manager of the mortgage grant fund, including providing periodic reports to the commission, as required; (iii) provide for the creation of a manual reflecting the commissioner's policies and procedures governing administration of the mortgage grant fund; (iv) provide for the appointment of an employee of the department to serve as a grant coordinator to assist the commissioner in managing the mortgage grant fund; (v) provide for the creation of an advisory committee to make recommendations to the commissioner and the grant coordinator concerning management of the mortgage grant fund; and (vi) establish various policies and procedures for grantees to apply for, receive disbursements, and return misused funds, from the mortgage grant fund.

*New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund*

HB3617 further amended Finance Code Chapter 156 by creating a new Section 156.555, allowing for claims to be made against the Mortgage Grant Fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted in the capacity of a residential mortgage loan originator but who did not hold the license required under Finance Code Chapter 157. The proposed rules, if adopted, would: (i) create definitions necessary to administer claims made against the mortgage grant fund; (ii) clarify that a person seeking to make a claim against the mortgage grant fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the mortgage grant fund, a claimant must provide the necessary information and documentation to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that an unlicensed individual against whom a claim was made and approved may have an administrative penalty imposed on him or her and that failure to pay such penalty constitutes grounds for denial of licensure under Finance Code Chapter 157; (vi) establish a process and procedure for paying approved claims in the event funds in the mortgage grant fund are unavailable at the time the claim is approved; (vii) clarify certain eligibility requirements for making a claim against the mortgage grant fund required by application of the requirements for making a claim against the mortgage grant fund as provided by Tex. Fin. Code §156.555(b); and (viii) clarify how the statute of limitations period for making claims on the recovery fund applies to claims made on the mortgage grant fund, thereby allowing for claims prior to the effective date of Tex. Fin. Code §156.555 and inception of the mortgage grant fund.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there will be no foreseeable losses or increases in revenue to the state or local governments as a result of enforcing or administering the proposed rules.

#### Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the proposed rules will be for the public to have a clearer understanding of the processes and procedures governing the department's administration of the recovery fund, the mortgage grant fund, and claims made against the mortgage grant fund.

#### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. The proposed rules concerning New Rules Concerning the Recovery Fund, if adopted, clarify existing authority for the commissioner, in his or her sole discretion, to pursue an administrative penalty against a licensed residential mortgage loan originator whose acts or omissions caused funds to be disbursed from the recovery fund, in order to recover such funds and replenish the recovery fund. However, authority for the commissioner to seek recovery of funds disbursed is authorized by Tex. Fin. Code §156.506(a-1), is discretionary by the commissioner, and not required by the proposed rules. Furthermore, pursuant to Tex. Fin. Code §156.501(b), an approved claim against the recovery fund is inherently the result of a violation of law by such residential mortgage loan originator, thereby necessarily constituting grounds for the commissioner to pursue disciplinary action and pursue an administrative penalty. Moreover, a licensed residential mortgage loan originator can avoid any such potential costs arising from an administrative penalty by conforming to the laws and rules governing use of his or her residential mortgage loan originator license. The proposed rules concerning New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund similarly clarify existing authority for the commissioner, in his or her sole discretion, to pursue an administrative penalty against an unlicensed individual whose fraudulent acts caused funds to be disbursed from the mortgage grant fund, in order to recover such funds and replenish the mortgage grant fund. Specifically, pursuant to Tex. Fin. Code §157.031 and §157.023, the commissioner is authorized to seek an administrative penalty for unlicensed activity. Tex. Fin. Code §156.551(c), meanwhile, allows such administrative penalty to be deposited in the mortgage grant fund. An unlicensed person may similarly avoid any such administrative penalty contemplated by the proposed rules by forbearing from engaging in unlicensed activity or behavior that constitutes fraud. Taking the foregoing into consideration, the proposed rules do not impose economic costs on persons required to comply with the proposed rules.

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions. The proposed rules concerning New Rules Concerning the Mortgage Grant Fund contemplate an employee of the department serving as grant coordinator for the mortgage grant fund, however, the department anticipates an existing employee of the department will absorb and perform such duties and thus the proposed rules will not require the creation of an additional employee position. The proposed rules do not require the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or

by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

#### SUBCHAPTER D. RECOVERY FUND

#### **7 TAC §§52.100 - 52.104**

##### Statutory Authority

This proposal is made under the authority of Tex. Fin. Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. This proposal is also made under the authority of Tex. Fin. Code §156.102(b-1) which authorizes the commission to adopt rules to promote the fair and orderly administration of the recovery fund consistent with the purposes of Finance Code Chapter 156, Subchapter F.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

##### §52.100. Purpose and Applicability.

The rules contained in 7 TAC Chapter 52, Subchapter D govern the Commissioner's administration of the recovery fund the Commissioner is required to establish, administer and maintain in accordance Tex. Fin. Code §13.016 and Finance Code Chapter 156, Subchapter F.

##### §52.101. Definitions.

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Application," means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the recovery fund in accordance with Tex. Fin. Code §156.504.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application as provided by paragraph (1) of this section.

(6) "Originator" has the meaning assigned by Tex. Fin. Code §180.002 in defining the term "residential mortgage loan originator."

(7) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Tex. Fin. Code §13.016 and Finance Code Chapter 156, Subchapter F.

(8) "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as residence.

§52.102. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.504, a claimant seeking to recover from the recovery fund must file a sworn written application with the Department which must be made on the current form prescribed by the Commissioner and posted on the Department's website ([www.sml.texas.gov](http://www.sml.texas.gov)).

(b) Payment of Approved Claims. Upon approval of a claim made on the recovery fund, the Commissioner will issue an order disbursing funds from the recovery fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the recovery fund. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.103. Administrative Penalty Against Originator.

In accordance with Tex. Fin. Code §§156.506(c) and 157.0241(b), in order to effect reimbursement of amounts disbursed from the recovery fund, if the Commissioner approves a claim made under Tex. Fin. Code §156.504, the Commissioner may impose an administrative penalty on the originator whose acts or omissions caused the claim in an amount not less than the approved



recovery fund claim amount. Upon payment of the administrative penalty, the Commissioner will cause the funds to be deposited into the recovery fund.

§52.104. Liability for Unpaid Claims.

(a) No Liability. The recovery fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Tex. Fin. Code §156.504 if the assets of the recovery fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the recovery fund contains insufficient assets to pay a claim approved by the Commissioner under Tex. Fin. Code §156.504, the Commissioner will:

\_\_\_\_\_ (1) record the time and date the claim was approved; and

\_\_\_\_\_ (2) pay approved but unpaid claims for which a recordation was made under paragraph (1) as funds in the recovery fund become available, in the order of the recorded time and date of such claims.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535



SUBCHAPTER E. MORTGAGE GRANT FUND

**7 TAC §§52.200 – 52.205**

Statutory Authority

This proposal is made under the authority of Tex. Fin. Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. This proposal is also made under the authority of Tex. Fin. Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G including rules to (i) ensure that a grant awarded from the mortgage grant fund is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.200. Purpose and Applicability.

The rules contained in 7 TAC Chapter 52, Subchapter E govern the Commissioner's administration of the Mortgage Grant Fund as provided by Finance Code Chapter 156, Subchapter G other than claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555 which are governed by the rules contained in 7 TAC Chapter 52, Subchapter F (relating to Mortgage Grant Fund: Recovery Claims for Unlicensed Activity).

§52.201. Definitions.

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Auxiliary mortgage loan activity company" has the meaning assigned by Tex. Fin. Code §156.002.

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(3) "Department" means the Department of Savings and Mortgage Lending.

(4) "Finance Commission" means the Finance Commission of Texas.

(5) "Grant Coordinator" means the individual appointed as the Grant Coordinator for purposes of §52.203 of this title (relating to Grant Coordinator).

(6) "Mortgage Grant Advisory Committee" or "MGAC" means the Mortgage Grant Advisory Committee formed to advise the Commissioner concerning administration of the fund, as provided by §52.204 of this title (relating to Mortgage Grant Advisory Committee).

(7) "Mortgage Grant Administration Manual" means the Grant Administration Policy Manual created by the Commissioner to reflect the various policies and procedures governing administration of the Mortgage Grant Fund grant program.

(8) "Mortgage Grant Fund" or "fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

§52.202. Commissioner as Manager.

(a) Manager. As provided by Tex. Fin. Code §156.553, the Commissioner serves as manager of the fund and administers all aspects of the fund.

(b) Periodic Reports to the Finance Commission. Unless the Finance Commission directs otherwise, the Commissioner or his or her designee (including but not limited to the Grant Coordinator) will report to the Finance Commission audit committee concerning the status and activities of the Mortgage Grant Fund at each regularly called meeting of the Finance Commission audit committee, or otherwise at the request of the Finance Commission or its audit committee.

(c) Mortgage Grant Administration Manual. The Commissioner will develop and create a manual reflecting the Commissioner's policies and procedures governing administration of the fund and the Mortgage Grant Fund grant program to be known and referred to as the Mortgage Grant Administration Manual (MGAM). The MGAM, and any amendments to the MGAM, must be approved by the Finance Commission audit committee.

(d) Website. The Commissioner is expressly authorized to establish and maintain a website in connection with administering the fund, through which the Commissioner may disseminate information to the public and prospective grantees concerning the fund.

(e) Promotional Materials. The Commissioner is expressly authorized to develop and distribute various informational materials to promote the fund to the public or otherwise raise awareness of the purpose and activities of the fund.

§52.203. Grant Coordinator.

The Commissioner may appoint an employee of the Department to serve as grant coordinator to assist the Commissioner in discharging his or her duties related to the Mortgage Grant Fund. The Grant Coordinator serves under the direction of the Commissioner and as liaison between grantees and the Mortgage Grant Advisory Committee (MGAC). The Commissioner may delegate any authority of the Commissioner to act as manager of the fund to the Grant Coordinator, including any specific duties listed under Tex. Fin. Code §156.553 except the authority to appear at hearings or judicial proceedings related to the fund.

§52.204. Mortgage Grant Advisory Committee.

(a) Formation. The Mortgage Grant Advisory Committee (MGAC) is created to serve in an advisory role and makes program recommendations to the Commissioner and Grant Coordinator regarding administration of the fund and the grant awards to be made from the fund. The MGAC will continue in existence until the abolishment date set by §52.30 of this title (relating to Advisory Committees and Informal Conferences).

(b) Governance. MGAC will be governed by the provisions of the Mortgage Grant Administration Manual, including composition, eligibility, appointment, and membership terms.

(c) Reporting. MGAC will make and report written recommendations to the Commissioner and Grant Coordinator for review and consideration concerning all aspects of administering the Fund including:

(1) evaluating grant applications to determine whether the application should be approved, and if so, a specific grant amount to award;

(2) monitoring ongoing grant awards to determine compliance;

(3) considering potential amendments to the Mortgage Grant Administration Policy Manual; and

(4) evaluating potential candidates for appointment to the MGAC.

§52.205. Grant Program.

(a) Scope. This section governs the administration of and disbursements from the fund (each of which is considered a grant disbursement) for purposes of:

(1) Tex. Fin. Code §156.554(b)(1), concerning grants to an auxiliary mortgage loan activity company or another nonprofit organization to promote financial education relating to mortgage loans; and

(2) Tex. Fin. Code §156.554(b)(3), concerning disbursements to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, or for the purposes provided by Tex. Fin. Code §393.628(c).

(b) Grant Cycle. The fund may have one competitive grant cycle each year.

(1) Funding determination. The grant funding determination is made by the Commissioner by December 31 of each year. The Commissioner will determine the separate funding available and allocated to each of the purposes of Tex. Fin. Code §156.554(b)(1) and (3).

(2) Programming cycle. A new fund grant programming cycle may open on January 1 of each year, and if opened, closes on December 31 of such year.

(c) Eligibility. A grant made under Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section may only be given to a company licensed by the Department as an auxiliary mortgage loan activity company, or a nonprofit organization. A grant made under Tex. Fin. Code §156.554(b)(3) and subsection (a)(2) of this section may be given to a nonprofit organization, school, or for-profit entity. Grant funding is not available to entities licensed or registered by the Department other than auxiliary mortgage loan activity companies in accordance with Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section.

(d) Grant Application. To be considered for the grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting eligibility criteria and timely submission of a grant application does not guarantee award of a grant in any amount.

(e) Review and Approval. The Commissioner, upon receipt of advice from the MGAC and Grant Coordinator, will review timely and complete applications and determine the grants to be awarded.

(f) Grant Agreement. To participate in the grant program, a grantee approved by the Commissioner to receive a grant must execute the grant agreement approved by the Commissioner for the applicable grant cycle.

(g) Grantee Compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over grant program funds. A grantee must use awarded funds in compliance with the following in effect for the applicable grant cycle:

\_\_\_\_\_ (1) all applicable state laws and regulations;

\_\_\_\_\_ (2) all applicable federal laws and regulations;

\_\_\_\_\_ (3) the Mortgage Grant Administration Manual;

\_\_\_\_\_ (4) the grant application, including all application guidelines and instructions at the time of application;

\_\_\_\_\_ (5) the grant agreement signed by the Commissioner or the Commissioner's designee and the grantee;

\_\_\_\_\_ (6) all reporting and monitoring requirements, as outlined in the grant agreement and subsection (f) of this section; and

\_\_\_\_\_ (7) any other guidance documents posted on the Mortgage Grant Fund website for the applicable grant cycle.

(h) Reporting and Monitoring.

\_\_\_\_\_ (1) General reporting requirements. To receive reimbursement of grant expenses a grantee must:

\_\_\_\_\_ (A) submit periodic grant reports as provided by the grant agreement;

\_\_\_\_\_ (B) maintain satisfactory compliance with the grant agreement and the grant activities as proposed by the grantee in its grant application;

\_\_\_\_\_ (C) identify, track and report performance measures;

\_\_\_\_\_ (D) track and report participant demographic information.

\_\_\_\_\_ (2) Progress reports. A grantee must submit progress reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

\_\_\_\_\_ (3) Six-month longitudinal report. A grantee must submit a six-month longitudinal report after program completion to demonstrate program objectives.

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(4) Monitoring. The Grant Coordinator or MGAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The Grant Coordinator or MGAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process; or

(B) Site visits and inspection reviews. The Grant Coordinator or MGAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(i) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (g) of this section. To ensure that grant funds are used for a public purpose, as provided by Tex. Fin. Code §156.556(1), grant funds will only be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses that were incurred before the beginning or after the termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement request. The Department will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds in response to approved requests.

(j) Misuse of Grant Funds. The Commissioner may require a refund of grant funds already disbursed to the grantee and may cancel the grant agreement or disqualify the grantee from receiving future grants from the fund if:

(1) grant funds are not used for a public purpose allowable under Tex. Fin. Code §156.554;

(2) grant funds are used in an illegal manner;

(3) grantee violates the terms or conditions of the grant agreement; or

(4) the Commissioner discovers grantee made any material misrepresentations in obtaining the grant or in seeking reimbursement of grant funds.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel

Department of Savings and Mortgage Lending  
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SUBCHAPTER F. MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED  
ACTIVITY

**7 TAC §§52.300 - 52.205**

Statutory Authority

This proposal is made under the authority of Tex. Fin. Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. This proposal is also made under the authority of Tex. Fin. Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.300. Purpose and Applicability.

The rules contained in 7 TAC Chapter 52, subchapter F govern the Commissioner's administration of Tex. Fin. Code §156.555, allowing for claims to be made against the Mortgage Grant Fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the required license issued under Finance Code Chapter 157.

§52.301. Definitions.

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Application," means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator or an individual acting or attempting to act in the capacity of an originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application as provided by paragraph (1) of this section.

(6) "Mortgage Grant Fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

(7) "Originator" has the meaning assigned by Tex. Fin. Code §180.002 in defining the term "residential mortgage loan originator."

(8) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Tex. Fin. Code §13.016 and Finance Code Chapter 56, Subchapter F.

(9) "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as residence.

§52.302. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.555, adopting by reference the procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F, a claimant must file a sworn written application with the Department and must be made on the current form prescribed by the Commissioner and posted on the Department's website ([www.sml.texas.gov](http://www.sml.texas.gov)).

(b) Payment of Approved Claims. Upon approval of a claim on the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555, the Commissioner will issue an order disbursing funds from the Mortgage Grant Fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the Mortgage Grant Fund for



purposes of Tex. Fin. Code §156.555. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.303. Consequences for Unlicensed Individual.

(a) Administrative Penalty. In accordance with Tex. Fin. Code §§157.031 and 157.023, and in order to potentially effect reimbursement of amounts disbursed from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555, if the Commissioner approves a claim made under Tex. Fin. Code §156.555, the Commissioner may impose an administrative penalty on the unlicensed individual whose fraudulent acts caused the claim in an amount not less than the approved Mortgage Grant Fund claim amount. As provided by Tex. Fin. Code §156.551(b), upon payment of the administrative penalty, the Commissioner will cause the funds to be deposited into the Mortgage Grant Fund, to the extent such fund has not met or exceeded the maximum amount set for the fund as provided by Tex. Fin. Code §156.551(c).

(b) Grounds for Denial. As provided by Tex. Fin. Code §180.201(1), failure by the unlicensed individual to pay the administrative penalty imposed by this section is a violation of an order of the Commissioner and therefore constitutes grounds for denial of an application from such individual for a residential mortgage loan originator license.

§52.304. Liability for Unpaid Claims.

(a) No Liability. The recovery fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Tex. Fin. Code §156.555 if the assets of the Mortgage Grant Fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the Mortgage Grant Fund contains insufficient assets to pay a claim approved by the Commissioner under Tex. Fin. Code §156.555, the Commissioner will:

\_\_\_\_\_ (1) record the time and date the claim was approved; and

\_\_\_\_\_ (2) pay approved but unpaid claims for which a recordation was made under paragraph (1) as funds in the Mortgage Grant Fund become available, in the order of the recorded time and date of such claims; and, provided, the Commissioner determines in his or her sole discretion that disbursement from the Mortgage Grant Fund will not injure, hamper, or impede the Commissioner's administration of and disbursements from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.554.

§52.305. Eligibility.

(a) Application of Finance Code Chapter 156, Subchapter F. Tex. Fin. Code §156.555(b), adopts by reference the eligibility and procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies

how certain of such requirements apply to a claim made on the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555.

(b) Actions by an Unlicensed Individual Acting as an Originator. To be eligible to recover from the Mortgage Grant Fund, the individual alleged to have caused harm to the claimant must have been acting or attempting to act in the capacity of an originator - actions for which a license under Finance Code Chapter 157 was required as provided by Tex. Fin. Code §157.012 and §81.100 of this title (relating to Licensing - General).

(c) Fraudulent Acts. Tex. Fin. §156.501, applicable to claims made on the recovery fund, provides that recovery from such fund is limited to acts by a licensed originator that constitute a violation of specific, enumerated provisions of Tex. Fin. Code §§157.024(a) and 156.304(b). As provided by Tex. Fin. Code §156.555, a claimant may make a recovery against the Mortgage Grant Fund for fraudulent acts committed by an unlicensed individual who acted as an originator as provided by subsection (b) of this section. To the extent a claimant meets his or her burden of proof to establish that an unlicensed individual committed acts of fraud, such claim is deemed to be eligible for recovery for purposes of Tex. Fin. Code §156.501 under Tex. Fin. Code §157.024(a)((3), describing a violation for a licensed originator engaging in improper, fraudulent, or dishonest dealings.

§52.306. Statute of Limitations at Inception.

Tex. Fin. Code §156.555(b) adopts by reference the statute of limitations period for making claims on the recovery fund under Finance Code Subchapter F and applies it to claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555. Specifically, pursuant to Tex. Fin. Code §156.503, a claim made on the recovery fund may not be filed after the fourth anniversary of the date the acts causing the actual damages occurred or should reasonably have been discovered. Tex. Fin. Code §156.555 and the Mortgage Grant Fund came into existence effective September 1, 2021. As a result, the earliest possible date for a claim to have accrued for purposes of the limitations period applicable to claims made under Tex. Fin. Code §156.555 is September 1, 2017, and any claim accruing prior to that date is barred.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

◆ ◆ ◆



7. **Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of a New Rule and the Repeal of 7 TAC §76.95, Concerning Fee for Special Examination or Audit.**

**PURPOSE:** The purpose of the new rules and repeal of 7 TAC §76.95 is to implement Senate Bill 1900 (SB1900), enacted during the 87<sup>th</sup> Legislature (Regular Session), which, among other things, amended Chapter 96 of the Finance Code to provide the Commissioner with examination authority over savings bank affiliates, and third-party service providers.

**RECOMMENDED ACTION:** The Department requests that the Finance Commission approve the new rule and repeal for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve for publication and comment the proposed new rules and repeal at 7 TAC §76.95.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 76. MISCELLANEOUS

SUBCHAPTER F. FEES AND CHARGES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal 7 Texas Administrative Code (TAC) Chapter 76, Subchapter F, §76.95 and further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 76, Subchapter F §76.95. This proposal and the rules as repealed or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 76 partially implement Finance Code Subtitle C, the Texas Savings Bank Act.

*Changes Concerning Special Examination Fees*

Existing §76.95 (relating to Fee for Special Examination or Audit), establishes a fee for examination of a savings bank outside of a savings bank's regular periodic examination (special examination). During the 87<sup>th</sup> Legislature (Regular Session), Senate Bill 1900 (SB1900) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 96 to provide to the department's commissioner (commissioner) examination authority over savings bank affiliates and third-party service providers. The Finance Code, as amended by SB1900 (Tex. Fin. Code §96.0551(c)), authorizes the Commissioner to collect a fee for conducting examinations on savings bank affiliates and third-party service providers. Proposed new §76.95, if adopted, would (i) clarify the commissioner's existing authority to perform examinations of savings bank holding companies, affiliates, and third-party service providers; (ii) classify the examination of a savings bank holding company, affiliate, or third-party service provider as a special examination subject to the rule; and (iii) change the calculation for the fee assessed for a special examination from a daily fee (\$325) to an hourly fee (\$75). The existing daily fee of \$325 has been in place since the rule was originally adopted on January 5, 2012. The department asserts an hourly fee more accurately reflects the actual work performed by the department's examiner and will result in fees that are more equitable and will better reflect the true cost of regulation.

*Other Modernization and Update Changes*

The proposed rules, if adopted, would make changes to modernize and update the rules including: (i) adding and replacing language to improve clarity and readability; (ii) removing unnecessary or duplicative provisions; (iii) and updating terminology.

### Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. Depending on the number and extent of special examinations conducted by commissioner, implementation of the proposed rules may result in an increase or decrease in fees paid to the department in the form of special examination fees. However, such fee is directly attributable to the actual costs borne by the department and allocable to the entity being examined, and will not actually result in additional revenue to the department.

### Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the proposed rules will be to have a rule that is easier to read and understand.

### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. With respect to savings bank affiliates and third-party service providers, the requirement for an affiliate or third-party service provider to pay an examination fee (subject to the commissioner's discretion) is imposed by the requirements of SB1900 and Tex. Fin. Code §96.0551(c), and not the proposed rules. With respect to savings bank holding companies, Tex. Fin. Code §97.006 requires that a savings bank holding company pay for the cost of its examination, and not the proposed rules. With respect to savings banks, existing §76.95 already requires a savings bank or savings bank holding company to pay a fee for a special examination. Proposed new §76.95 imposes an hourly fee in lieu of a daily fee, however, such change is not anticipated to result in substantial economic costs to savings banks. Moreover, according to department records, in the five years prior to this proposal, the commissioner has not actually collected a fee under existing §76.95.

### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### **Government Growth Impact Statement**

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement). The proposed rules create a new requirement for savings bank holding companies, affiliates, and third-party service providers to pay a fee to compensate the department for the cost of their examination, however, as related above, such requirement is not imposed by the proposed rules but by the existing requirements of Tex. Fin. Code §96.0551(c) and §97.006; the proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

#### **Local Employment Impact Statement**

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### **Fiscal Impact on Small and Micro-Businesses, and Rural Communities**

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### **Takings Impact Assessment**

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### **Public Comments**

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

**7 TAC §76.95**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

*§76.95. Fee for Special Examination or Audit.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

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**7 TAC §76.95**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of Finance Code §96.0551(c) which authorizes the commissioner to collect a fee for conducting examinations on savings bank affiliates and third-party service providers. This proposal is also made under the authority of Finance Code §97.001(3) which authorizes the commission to adopt rules concerning the regulation of saving bank holding companies under Finance Code, Subtitle C, Subchapter A. This proposal is also made under the authority of Finance Code §97.006 which authorizes the commissioner to exam a savings bank holding company and requires the holding company to pay for the cost of examination.



This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.95. Fee for Special Examination.

(1) A special examination is one that is conducted outside the context of a savings bank's annual examination and includes but is not limited to examinations of a savings bank holding company, interstate branches of savings banks in Texas as the host state, and a savings bank's affiliates and third-party service providers. The savings bank or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(2) The fee for a special examination under this section will be calculated at a rate not to exceed \$75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The Commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(3) In connection with an examination under this section, the regulated entity or other legally responsible party (including the savings bank, with respect to affiliates and third-party service providers) must pay the examination fee and costs incurred as provided by this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
For further information, please call: (512) 475-1535

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**8. Discussion of and Possible Action Regarding Anticipated and Pending Litigation:**

**Anticipated Litigation**

None.

**Pending Litigation**

None.

**D.**

**Texas Department of Banking**

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Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

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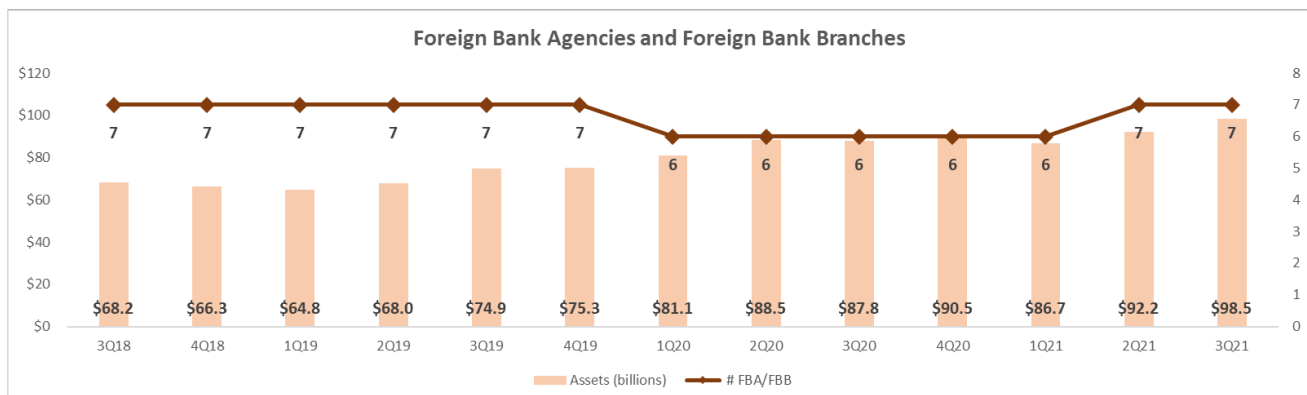
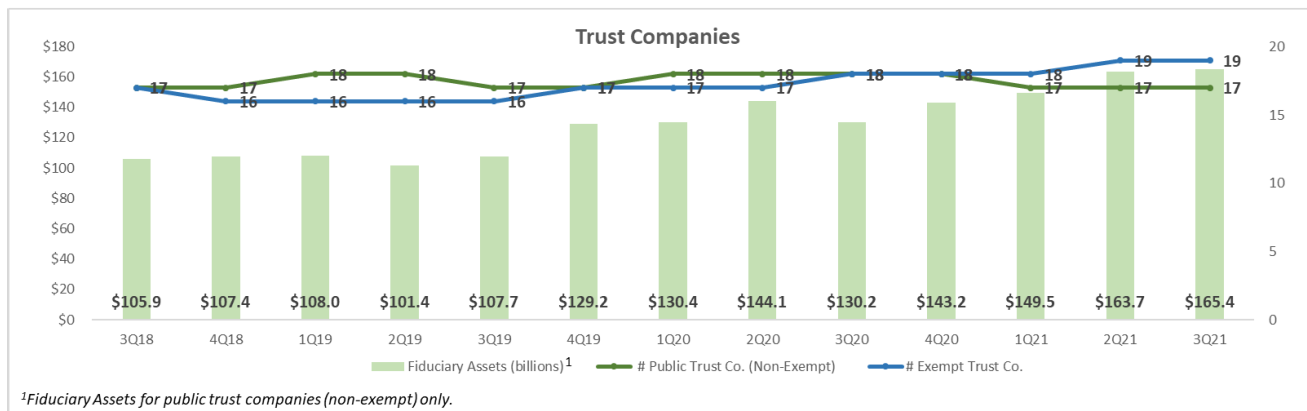
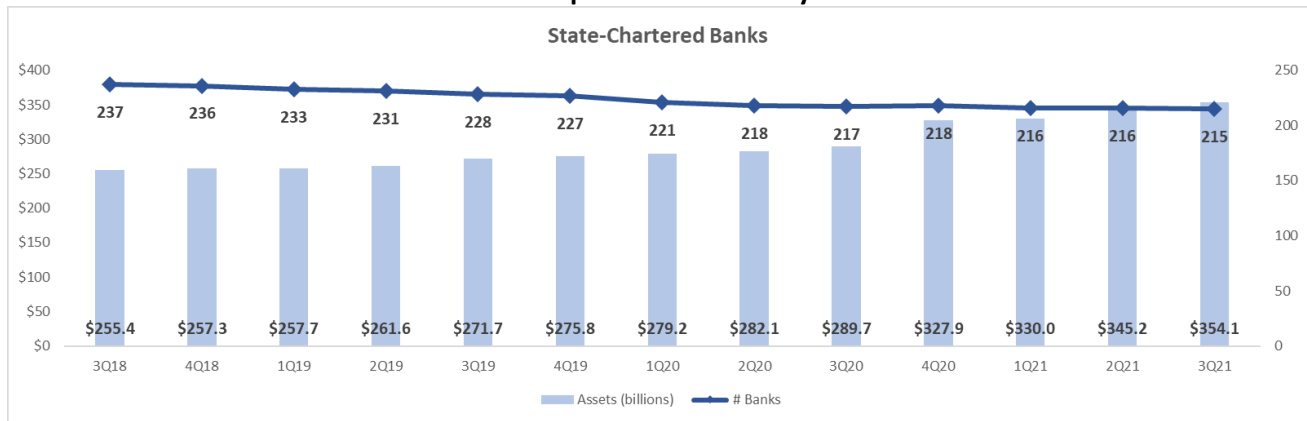
To: Finance Commission Members

From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*

Date: August 4, 2021

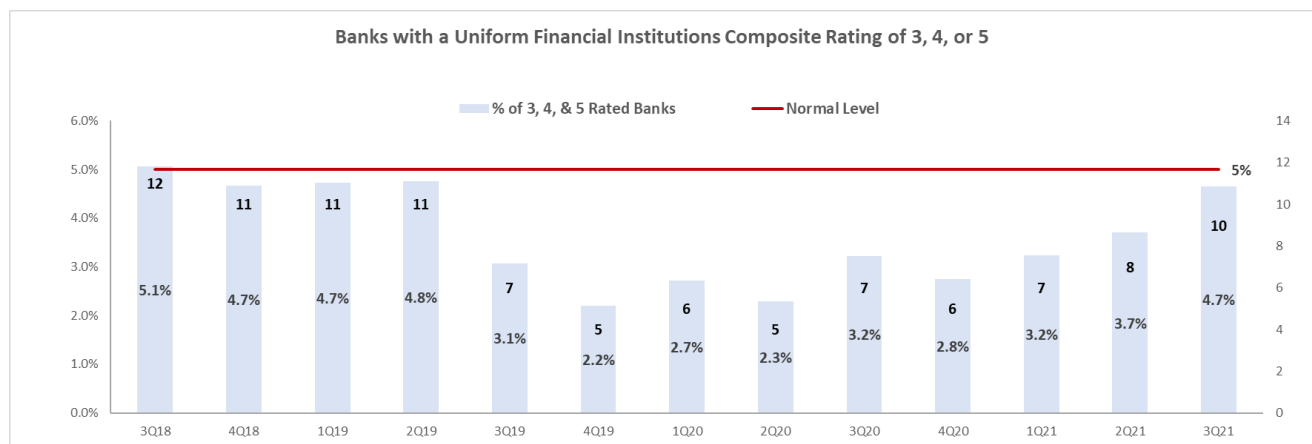
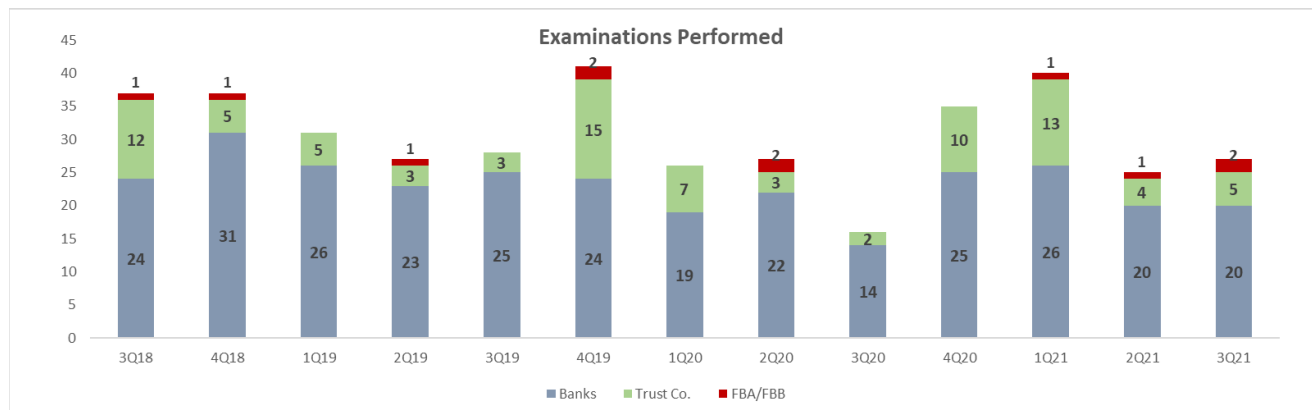
Subject: Summary of the Bank & Trust Supervision Division Activities

### Bank and Trust Supervision – Industry Profiles



## Summary of the Bank &amp; Trust Supervision Division Activities

Page 2



The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks is in the normal range between 3% and 5% of the total number of institutions. The support of the government stimulus programs has limited the economic fallout from the COVID-19 pandemic, and economic conditions continue to improve as businesses reopen. As a result, the risk of problem banks materially increasing due to the COVID-19 pandemic is lessening.

## Summary of the Bank &amp; Trust Supervision Division Activities

Page 3

**Enforcement Actions Outstanding by Type**

(Number outstanding as of the period indicated)



Formal actions include Orders to Cease and Desist, Consent Orders, Written Agreements and Supervisor Actions. Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions. Compliance actions are not included.

Compliance with Examination Priorities		
Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2020	FY 2021 (YTD – June 2021)
Commercial Banks (All / DOB Only)	96% / 94%	94% / 91%
IT	97% / 97%	98% / 100%
Trust	100% / 100%	100% / 100%
Foreign Banks (FRB)	67%	60%
Trust Companies (DOB)	67%	100%
IT	100%	100%

The division is meeting examination priorities for FY 2021 for IT and trust examinations but remains outside of guidelines for commercial and foreign bank examinations. Seven commercial bank examinations were started an average of 14 days in the first half of this fiscal year. The Department has

since caught up on examinations such that continued improvement in compliance with examination priorities is expected through the remainder of this fiscal year. As a reminder, compliance with examination priorities for foreign bank entities will remain a challenge for Fiscal Year 2021 as these examinations are conducted jointly with the Federal Reserve, who is focusing examination efforts on higher risk entities.

### Division Highlights

- **Texas State-Chartered Banks May Provide Virtual Currency Custody Services:** The Department issued Industry Notice [2021-03](#), Authority of Texas State-Chartered Banks to Provide Virtual Currency Custody Services to Customers, on June 10, 2021. This notice affirms that Texas state-chartered banks may provide customers with virtual currency custody services, so long as the bank has adequate protocols in place to effectively manage the risks and comply with applicable law.
- **COVID-19 Update:**
  - o The Department continues to actively monitor and respond to the changing circumstances brought about by the COVID-19 pandemic. Most banks have reverted to normal operating schedules now that vaccines are readily available; however, several instances of COVID outbreaks have occurred resulting in temporary branch closures. The Department maintains regular communication with regulated entities and performs offsite monitoring of key financial metrics.
  - o In July, the Department began onsite examinations as well as in person management and board meetings on a limited basis. The feedback has been positive. Banks and trust companies due for an examination are now given the option for either an onsite or offsite examination based on management's comfort level and COVID-19 cases in the community. In addition, in person meetings with staff at Austin Headquarters are occurring upon request.
  - o The impact of the COVID-19 pandemic to bank loan portfolios has thus far been minimal. Adversely classified asset levels have increased modestly, and overall credit risk remains sound. Most of our banks provided loan deferrals at the onset of the pandemic to help their customers cope with decreased cash flow. Subsequently, feedback from bankers indicates that only a small portion of the deferrals have not returned to original payment terms.
- **Special Operations and Conferences:**
  - o On June 21, 2021, Director of Examination Support Activities Chris Robinson represented the Department on the Regulatory Update segment of the Texas Bankers Association (TBA) Wealth Management and Trust Audit and Operations Seminar Compliance School, Austin.
  - o Department staff participated in the TBA Texas Tour events held in Abilene, Austin, Corpus Christi, Dallas, Ft. Worth, Lubbock, and San Antonio. These sessions were held between June 29<sup>th</sup> and July 23<sup>rd</sup> and provided updates on what the political, regulatory, and competitive environment will hold for Texas bankers as they lead their communities out of the pandemic.



- On July 14, 2021, Review Examiner Kevin Wu represented the Department on the Regulatory Panel at the TBA BSA/AML Compliance School, Austin.
- On August 3, 2021, Senior Examiner Bob Smith represented the Department on the Regulatory Panel at the TBA Compliance and Enterprise Risk Management School, Austin.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

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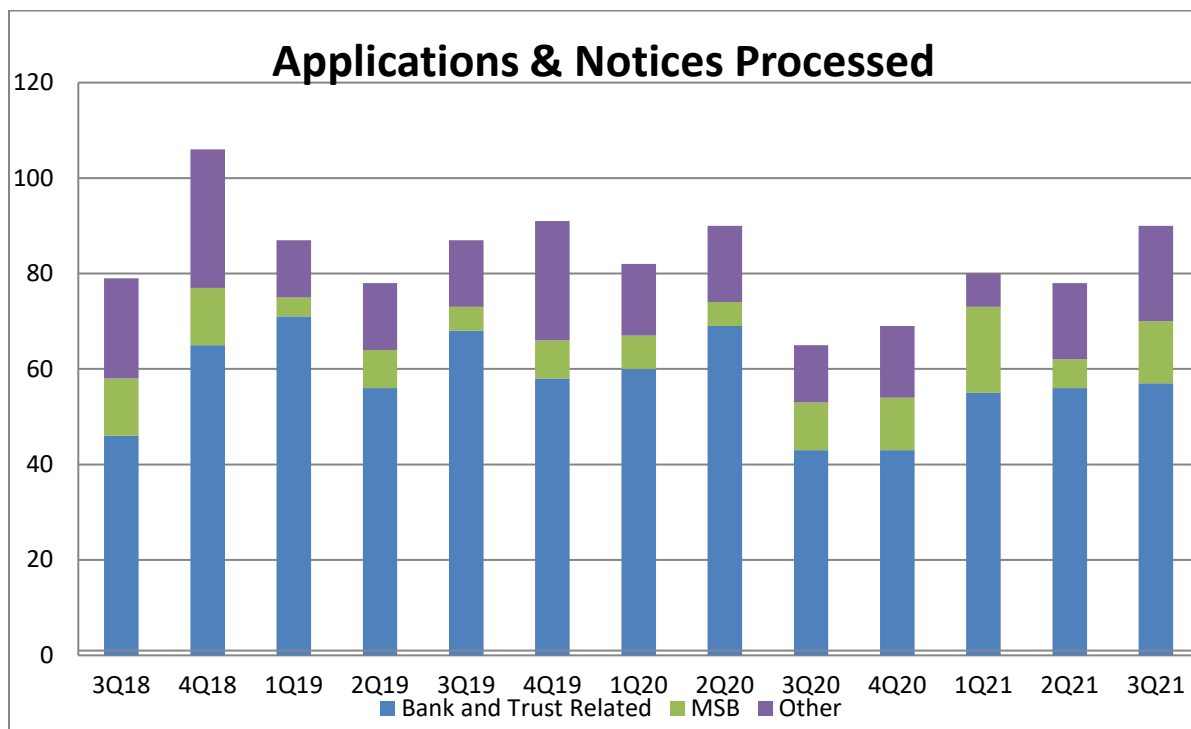
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To: Finance Commission Members

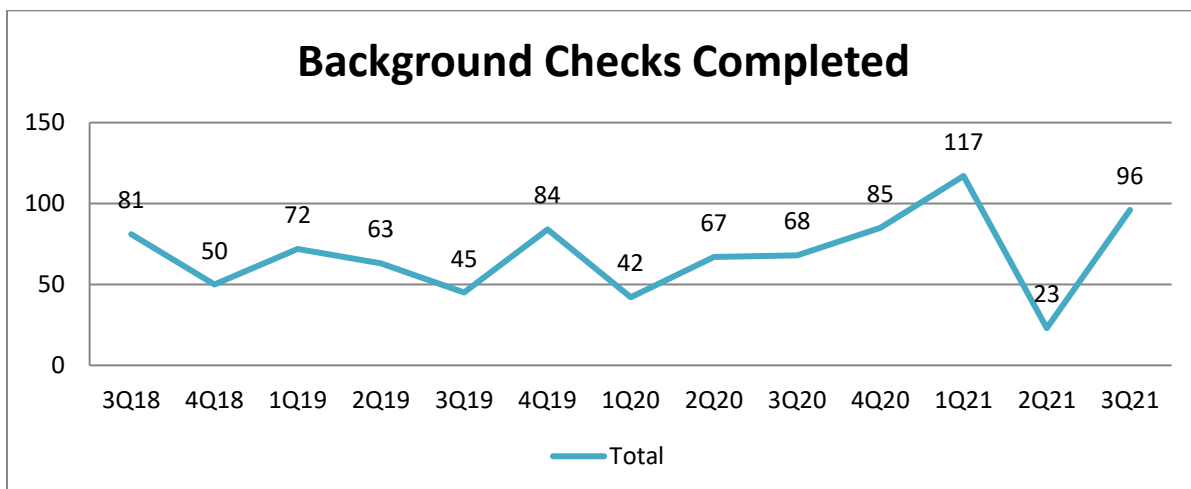
From: Mark Largent, Director of Corporate Activities

Date: August 4, 2021

Subject: Summary of the Corporate Division's Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Note: The reduction in background checks in 2Q21 was the result of delays in accessing federal background check information caused by the SolarWinds security breach. This has been resolved and the division has resumed the checks.

Entities/Activities	Applications and Notices Under Review (as of August 3, 2021)
Bank Related	16
Trust Companies	2
Money Services Business (MSB)	26
Others	4
<b>Totals</b>	<b>48</b>

#### Division Highlights

- Application volume remains high but below the level reported at the last Finance Commission meeting. Compared to our last report submitted, the Corporate Division's filings presently under review by category type changed by:
  - Bank related decreased 12 (43%)
  - Trust company was unchanged 0 (0%)
  - MSB related decreased 7 (21%)
  - Other was unchanged 0 (0%)
- **Charter, Conversion, and Merger Activity** – Since the last report to the Finance Commission, the following transactions have consummated:
  - *Banks*
    - The Ozona National Bank, Ozona, Texas, converted to a Texas state bank charter under the name of Ozona Bank [estimated gain in state banking assets of \$303 million].
    - Happy State Bank, Happy, Texas, completed its merger with First National Bank of Tahoka, Tahoka, Texas [estimated gain in state banking assets of \$57 million].
  - *Trust Companies*
    - None.



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Commissioner

## TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision *JS*

Date: August 3, 2021

Subject: Summary of Non-Depository Supervision (NDS) Activities

			FY 2021							
Entity	FY 2020		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		4 <sup>th</sup>	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	171	\$163.4	181	\$164.1	184	\$163.6	191	\$171.0		
Prepaid Funeral Contract (PFC)	353	\$4.3	352	\$4.3	354	\$4.5	347	\$4.5		
Perpetual Care Cemeteries (PCC)	243	\$376.5*	243	\$386.7*	243	\$390.9*	243	\$395.1*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a		
Examinations Performed										
MSB	93		24		21		18			
MSB Limited Scope	2		1		0		0			
MSB Accepted other State	12		0		2		1			
PFC	263		61		42		58			
PFC Limited Scope	0		0		0		0			
PCC	179		51		53		59			
PCC Limited Scope	1		0		0		0			
Ratings (# / %) Assigned to All Regulated Entities										
1	298	39.84%	294	38.99%	296	39.31%	294	39.41%		
2	391	52.27%	389	51.59%	387	51.39%	379	50.80%		
3	56	7.49%	66	8.75%	67	8.90%	71	9.52%		
4 & 5	3	0.40%	5	0.67%	3	0.40%	2	0.27%		
Noncompliance with Examination Priorities (Past Due)										
MSB	14		3		3		1			
PFC	2		2		0		0			
PCC	0		0		0		0			

### NOTES:

Limited scope examinations do not receive a rating.

\* PCC \$ amounts reflected in the millions.

## Examination Activities

NDS continued to perform remote examinations which enabled our division to meet all performance measures for the third quarter of fiscal year 2021. Below is additional information on the examination activities reflected on page 1 of this memorandum.

- As of the close of May 2021, no PFC or PCC examinations were past due.
- The one past due MSB examination was conducted in July 2021 as part of a multi-state examination.
- NDS continues to monitor the effects of COVID-19 on the MSB, PFC, and PCC industries, and anticipates resuming travel starting September 2021 to conduct on-site examinations in a limited capacity. The on-site examinations will be conducted in coordination with license holders, while also monitoring COVID-19 developments impacting the health and safety of Departmental staff and that of our regulated entities. In the MSB area, multi-state coordinated remote examinations continue with the Department actively participating in the Multistate MSB Examination Task Force (MMET) quarterly scheduling calls. Most other state MSB regulators plan on conducting remote examinations at least through the end of 2021.

## Division Activities

- NDS staff continues to monitor for and investigate non-compliant activity, primarily in the MSB area. During this reporting period, NDS initiated a regulatory enforcement action against an unlicensed entity to ensure compliance with applicable rules and regulations, and to protect the rights and interests of Texas consumers.
- NDS staff also continues to work closely and participates in various meetings with organizations, such as CSBS, MMET and Money Transmitters Regulators Association, to stay informed of matters affecting our regulated entities, and to promote consistency in regulatory activities.
- On June 9<sup>th</sup>, Director Saucillo was a speaker at the Regliance 2021 virtual conference. The conference was designed for compliance professionals in the money transfer and cross-border payments industry. Director Saucillo's panel addressed what steps and actions a MSB license holder can take to successfully prepare for an examination.
- On July 30<sup>th</sup>, Director Saucillo completed a two-week 2021 Senior Management Program offered by the Governor's Center for Management Development. The program addressed current personal, professional and organizational issues relevant to senior managers.
- NDS conducted interviews in July 2021 to fill the MSB Financial Examiner I/II vacancy resulting from an examiner retiring in August 2021. An offer was extended and accepted with a September 2021 start date.

In July 2021, a PFC/PCC Financial Examiner with nine years of experience resigned. A posting to replace the examiner closed on July 30, 2021. NDS anticipates interviewing applicants in August 2021 to fill the vacancy.



Charles G. Cooper  
Commissioner

## ***TEXAS DEPARTMENT OF BANKING***

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### **Memorandum**

**To:** Finance Commission Members

**From:** Lori Wright, Director of Human Resources

**Date:** August 4, 2021

**Subject:** Summary of the Human Resources Division Activities

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### **Human Resources Fiscal Year 2021 Activities**

<b>Active Postings</b>				
<b><i>Number of Positions</i></b>	<b><i>Position</i></b>	<b><i>Division</i></b>	<b><i>Status</i></b>	<b><i>Activities</i></b>
1	Program Supervisor VI	DSS	Closing 08/13/2021	
1	Programmer V	MIS	Open Until Filled	
1	Human Resources Specialist <i>III-IV Staffing Specialist (Limited Term)</i>	HR	Open Until Filled	
1	Financial Examiner V-VI <i>Corporate Analyst</i>	Corporate Activities	Closing 08/13/2021	
1	Financial Examiner V <i>Credit Review Specialist</i>	Bank and Trust	Open Until Filled	
1	Financial Examiner IV-V <i>Commercial Bank Examiner</i>	Bank and Trust	Perpetual Posting	
1	Financial Examiner VI-VII <i>Commercial Bank Examiner</i>	Bank and Trust	Perpetual Posting	

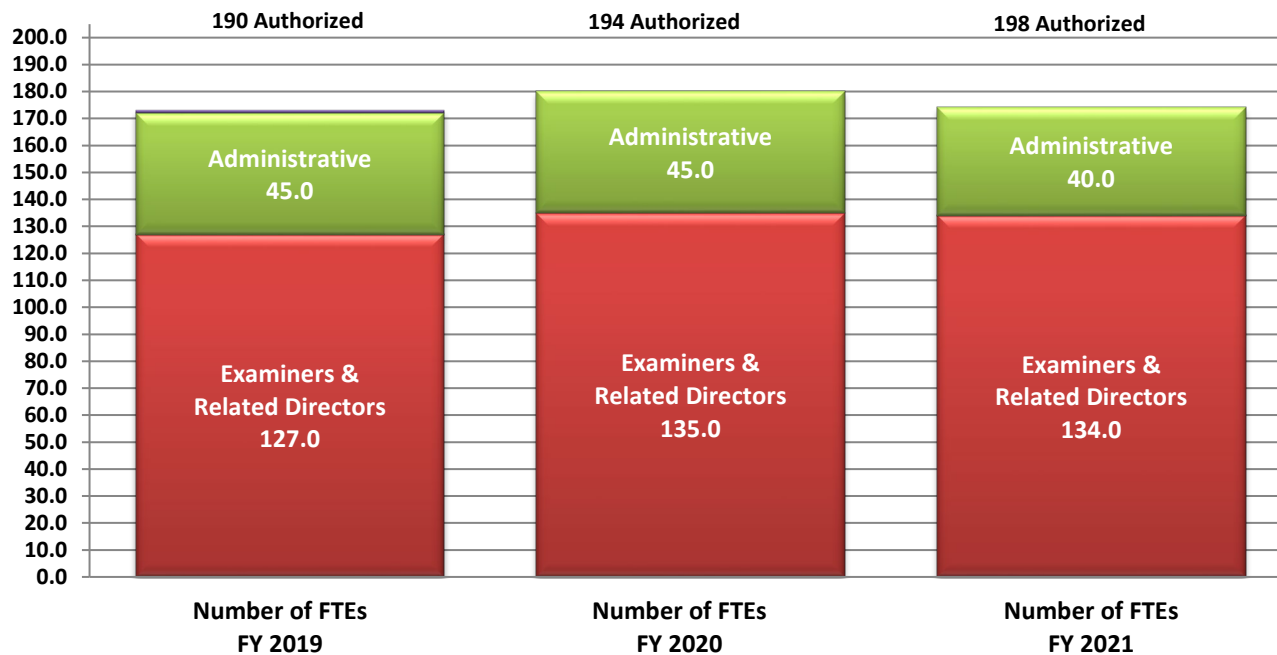
#### **NEOGOV**

*Supervisor Evaluations Completed June 30, 2021.*

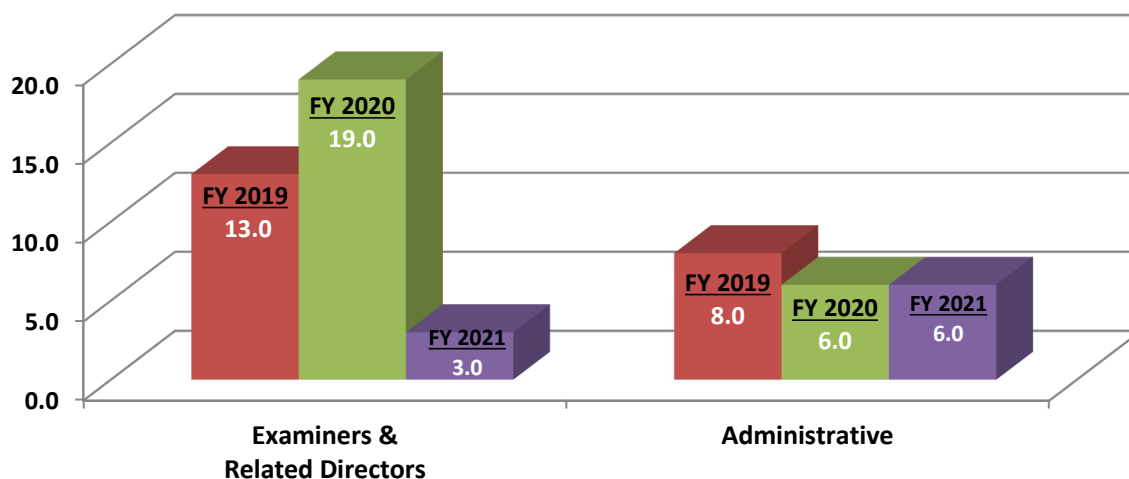
#### **CAPPS**

*Preparing for CAPPS HR/Payroll Kickoff.*

## Texas Department of Banking Employee Data for Fiscal Years 2019, 2020 and 2021 as of 07/31/2021

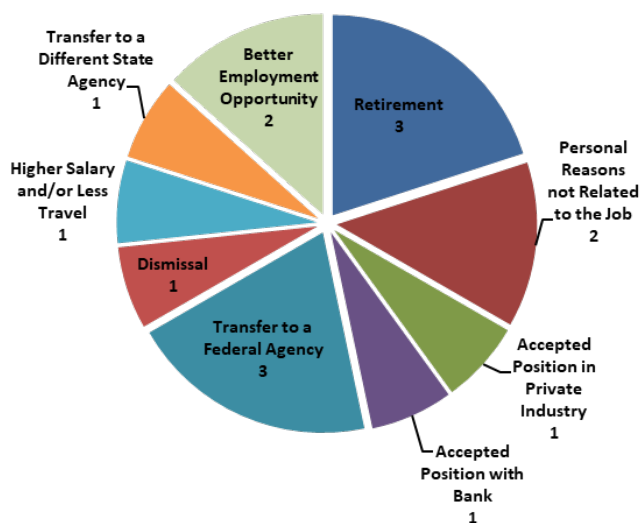


## New Hire Data for Fiscal Years 2019, 2020 and 2021

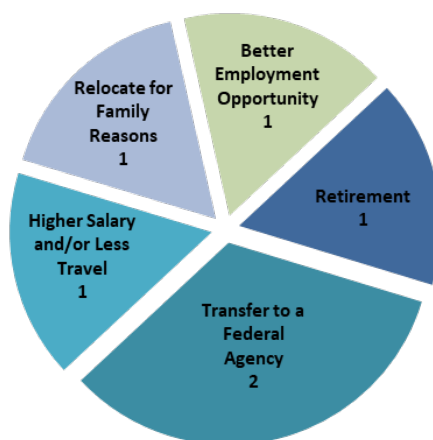


## FY 2021 Employee Turnover Reasons

All Employees  
15 Resignations



Financial Examiners Only  
6 Resignation



As of 07/31/2021



**Department of Banking**  
**Actual Performance for Output Measures**  
**Fiscal Year 2021**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	
<b>Output Measures-Key</b>					
<b>1-1-1 Bank Examination</b>					
<b>1. # Bank Examinations Performed</b>					
Quarter 1	89	27	27	30.34%	*
Quarter 2	89	20	47	52.81%	
Quarter 3	89	19	66	74.16%	
FY 2021, Quarter 1 - The number of bank examinations for quarter one was corrected from 26 to 27 to reflect accurate data.					
The number of bank examinations is above the target due to performing more joint examinations than projected.					
<b>2. # Foreign/Trust/IT Examinations Performed</b>					
Quarter 1	197	58	58	29.44%	
Quarter 2	197	45	103	52.28%	
Quarter 3	197	64	167	84.77%	*
FY 2021, Quarter 3 - The measure is above the target due to performing more IT examinations than anticipated this quarter.					
<b>1-2-1 Non-Bank Examination</b>					
<b>1. # NDS Licensees Examined</b>					
Quarter 1	550	137	137	24.91%	
Quarter 2	550	118	255	46.36%	
Quarter 3	550	136	391	71.09%	
<b>1-3-1 Application Processing</b>					
<b>1. # License Applications Completed</b>					
Quarter 1	298	85	85	28.52%	
Quarter 2	298	83	168	56.38%	*
Quarter 3	298	92	260	87.25%	*

FY 2021, Quarter 2 - The number of subsidiary, money services business, and conversion filing activities exceeded expectations.

FY 2021, Quarter 3 - The output measure is approximately 12.3% above target due to an overall increase in corporate related activities. Most notably, applications and notices are above target through the third quarter for subsidiary and Money Services Businesses filings.



Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

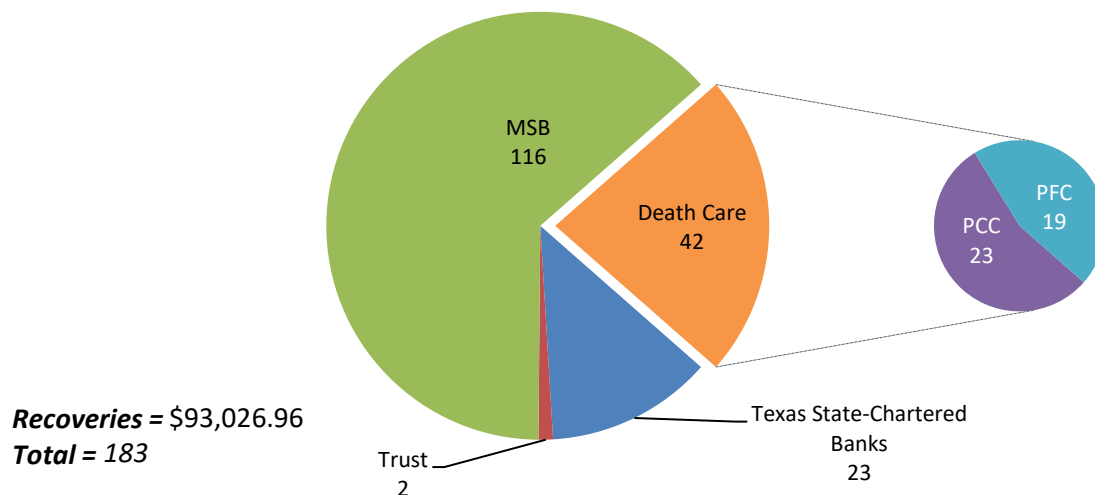
512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

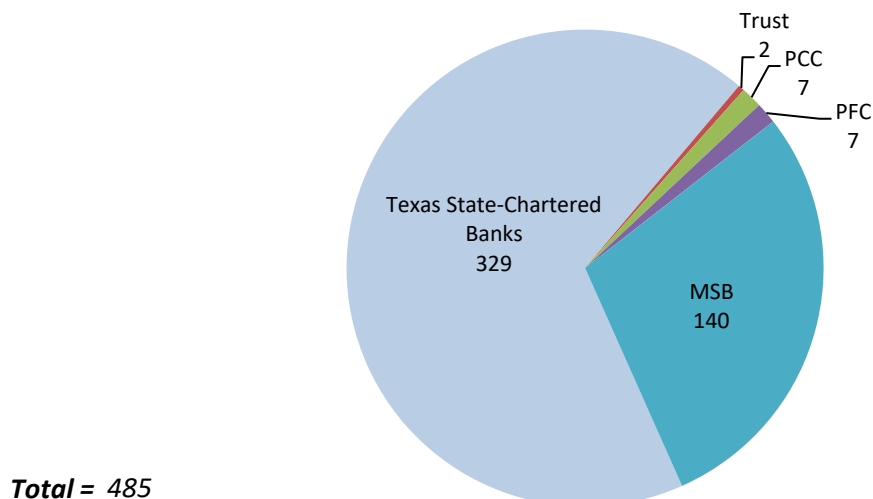
**To:** Finance Commission Members  
**From:** Phil Lena, Financial Analyst  
**Date:** August 4, 2021  
**Subject:** Summary of the Strategic Support Division Activities

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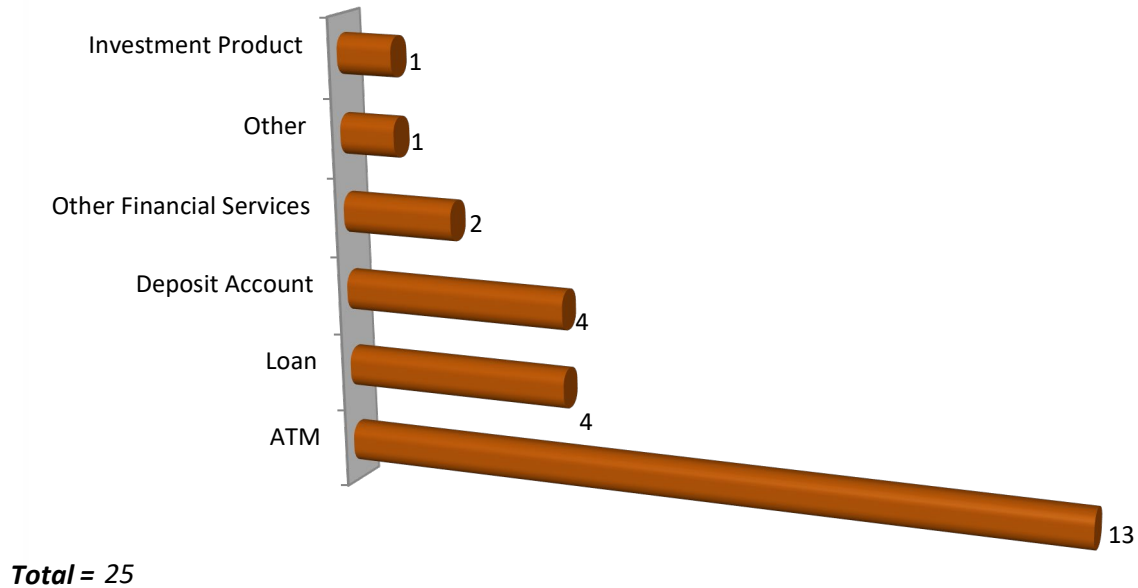
### Jurisdictional Written Complaints September 2020 - June 2021



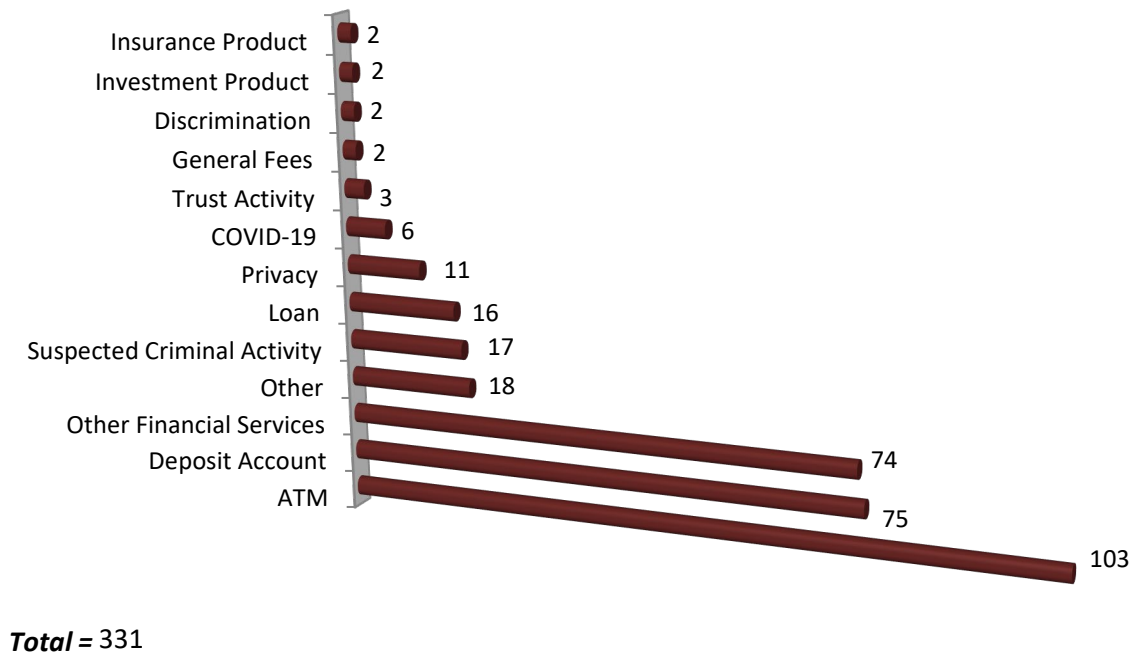
### Inquiries on Jurisdictional Entities September 2020 - June 2021



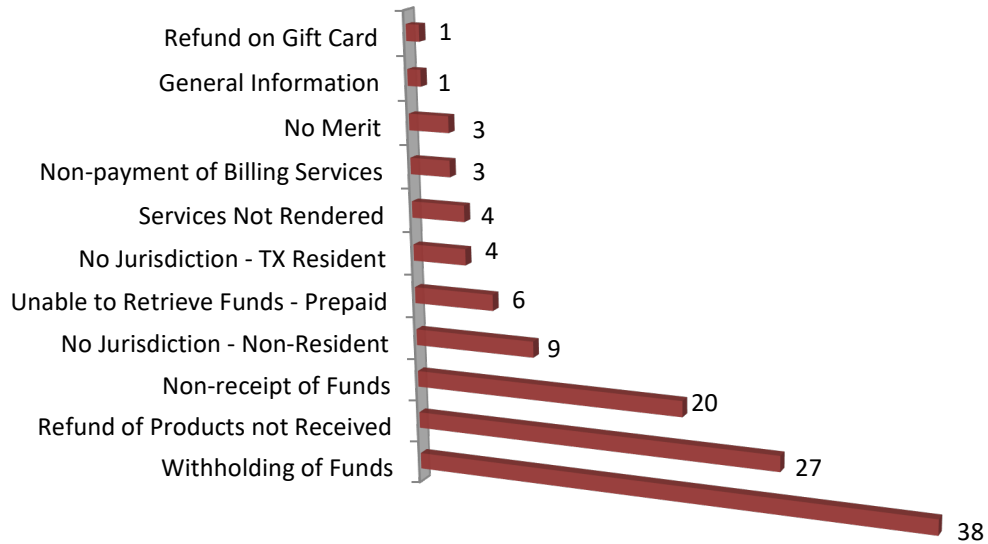
**State-Chartered Banks and Trust Companies  
Written Complaints by Type  
September 2020 - June 2021**



**State-Chartered Banks and Trust Companies  
Inquiries by Type  
September 2020 - June 2021**

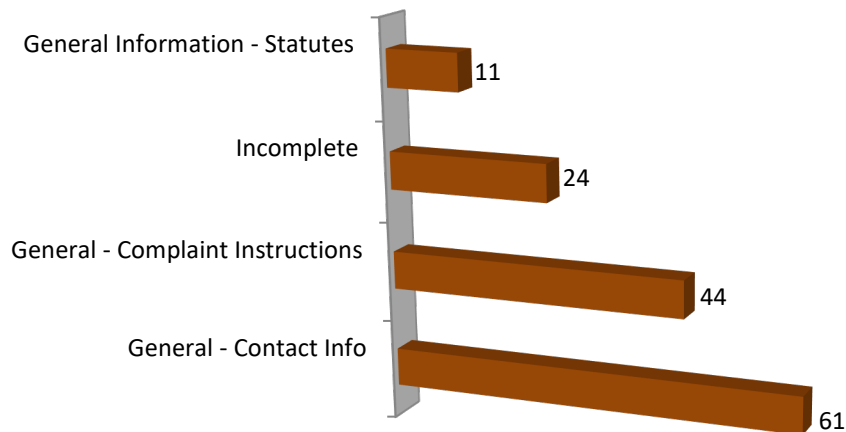


**Money Services Businesses  
Written Complaints by Type  
September 2020 - June 2021**



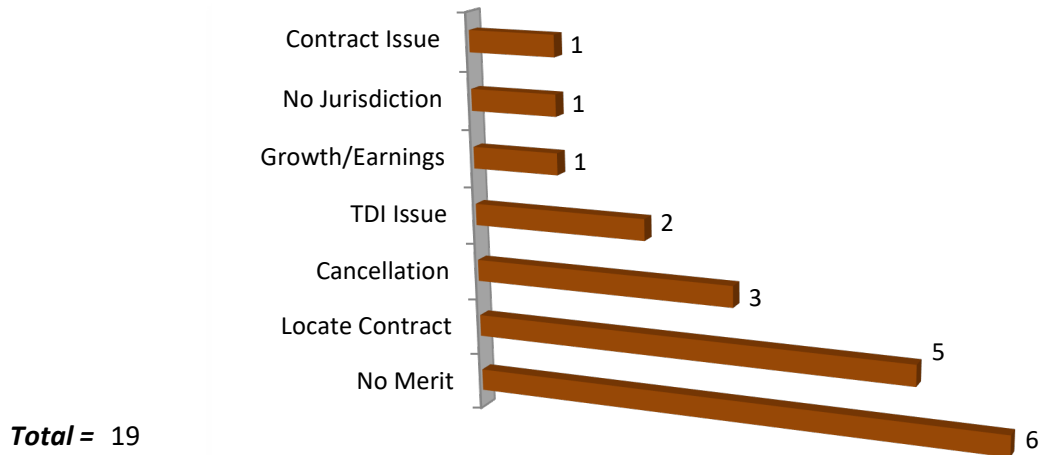
**Total = 116**

**Money Services Businesses  
Inquiries by Type  
September 2020 - June 2021**

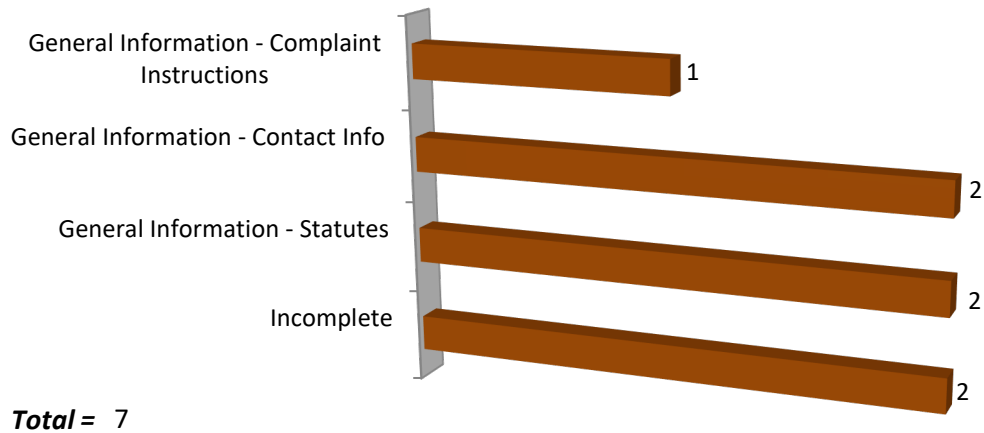


**Total = 140**

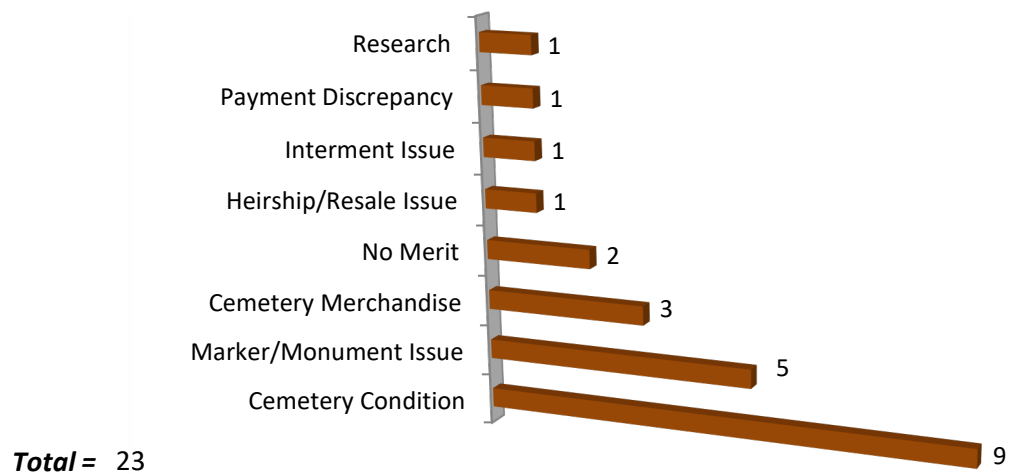
**Prepaid Funeral Contract Sellers  
Written Complaints by Type  
September 2020 - June 2021**



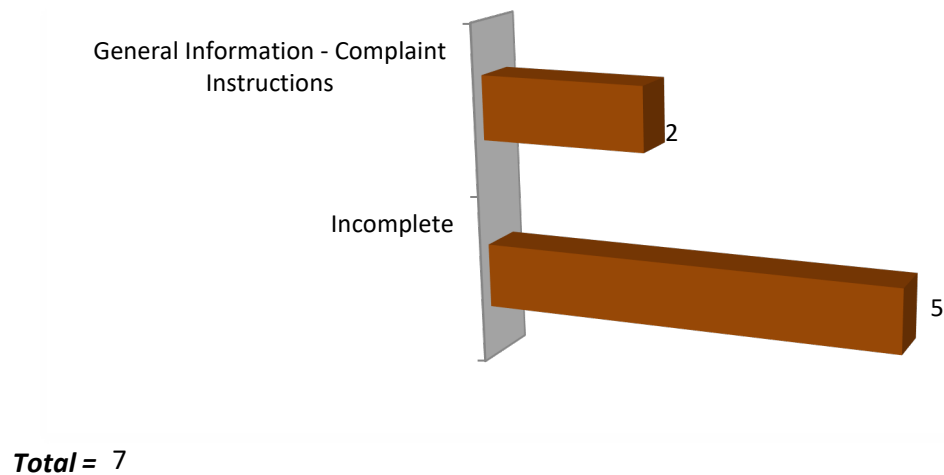
**Prepaid Funeral Contract Sellers  
Inquiries by Type  
September 2020 - June 2021**



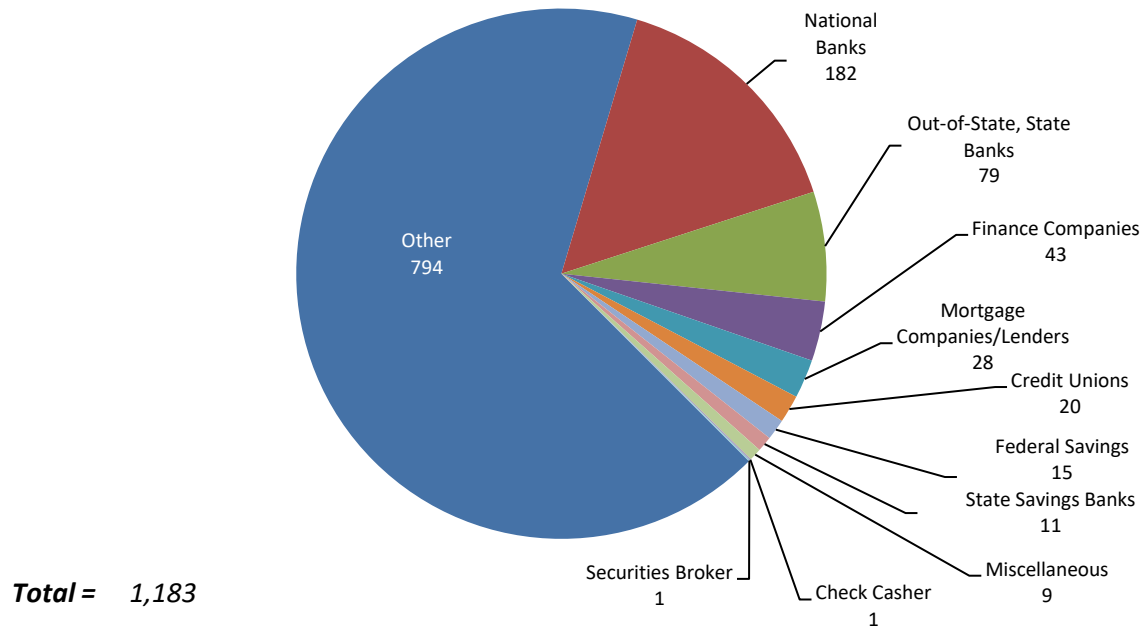
**Perpetual Care Cemeteries  
Written Complaints by Type  
September 2020 - June 2021**



**Perpetual Care Cemeteries  
Inquiries by Type  
September 2020 - June 2021**



### Complaints and Inquiries Against Non-Jurisdictional Entities September 2020 - June 2021



Often, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

### Complaint Activities Information by Quarter

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
<b>State-Chartered Banks</b>				
Avg. Number of Days to Close a Written Complaint	55	42	57	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	10	7	7	N/A
<b>Trust</b>				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	N/A
Number of Written Complaints Resolved	N/A	N/A	N/A	N/A
<b>PFC/PCC</b>				
Avg. Number of Days to Close a Written Complaint	22	23	22	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	15	6	14	N/A
<b>MSB</b>				
Avg. Number of Days to Close a Written Complaint	24	25	24	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	N/A
Number of Written Complaints Resolved	27	30	49	N/A

**Closed Account Notification System (CANS) ACTIVITY**  
January 1, 2018 – July 31, 2021

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	191	344
Texas State-Chartered Savings Banks	22	56
Federal Savings Banks	10	N/A
State Credit Unions	133	674
Federal Credit Unions	229	304
National Banks	170	111
Out-of-State State-Chartered Banks	12	104
Out-of-State National Banks	6	N/A
<b>Total</b>	<b>773</b>	<b>1,593</b>

**Bank Examination Testing System (BETS) Activity**  
Number of Candidates Passing Each Phase

	FY 2018	FY 2019	FY 2020	FY 2021 As of 07/31/21
I. General Knowledge	6	3	4*	4
II. Loan Analysis	3	5	7	1
III. Panel	2	5	10	3
IV. Test Bank	3	4	7	5
<b>Total FE3</b>	<b>22</b>	<b>19</b>	<b>15</b>	<b>18</b>

**Promotions**

<b>Commissioned Examiners</b>	2	5*	7	5
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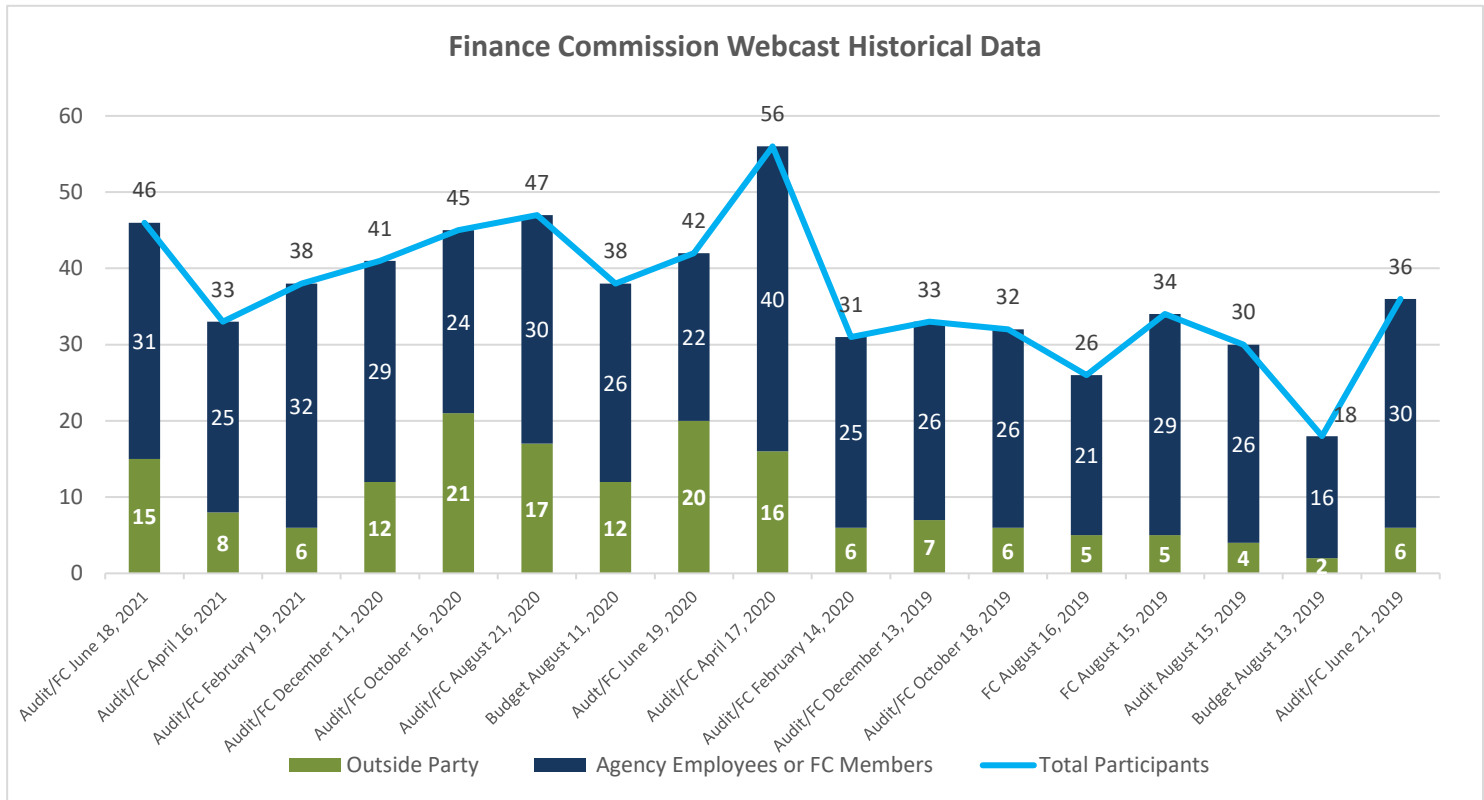
\*Includes a FE V Credit Specialist

**Other Divisional Items:**

- *Staffing*
  - *Director Michelle Hodge resigned in July 2021.*
- *First Special Session*
  - Governor Greg Abbott convened a Special Legislative Session on Thursday, July 8, 2021, with eleven agenda items. Legislators have filed 412 bills. House and Senate committee hearings are on-going. Numerous bills have been passed in the Senate; however, the House has not had a quorum since July 12, 2021, and no bills have passed in the House. The Department is tracking bills and monitoring the activities of the Special Session.
- *Financial Education*
  - On Wednesday, July 28, 2021, the Department held a joint financial education webinar "Budgeting" with the OCC. A 45-minute webinar was led by Financial Examiner Charli McCue and the OCC's TFE Grant and Financial Education Coordinator Andrea Johnson with a total of 51 participants.



- *Personnel and Policies Manual and Procedure Updates:*
  - Revised Administrative Memorandum (AM)
    - AM 2033 – Confidential Email Addresses of the Public (July)
    - AM 2031 – Delegation of Authority (July)
    - AM 2041 – Examination Due Date Calculation (Aug )





Charles G. Cooper  
Commissioner

## ***TEXAS DEPARTMENT OF BANKING***

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

### **Memorandum**

**TO:** Finance Commission Members  
**FROM:** Catherine Reyer, General Counsel  
**DATE:** August 2, 2021  
**RE:** Legal Division Update

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#### **Litigation**

There are no pending litigation matters at this time.

#### **Contested Case Hearings**

No cases are currently docketed for administrative hearing at this time. Several investigations are pending.

#### **Orders Issued 6/1/21 – 7/31/21**

During this time period, the Commissioner issued one enforcement order, which is public, final and non-appealable:

##### ***Non-Depository Supervision***

- Consent Order dated June 18, 2021; Stratex Holdco, LLC, Chicago, IL

#### **Public Information Requests**

From June 1, 2021 through July 31, 2021, staff received and responded to 20 requests for public information addressed to the Department of Banking, and referred one request for an opinion to the Office of the Attorney General. During the same period, we received and responded to two public information requests addressed to the Finance Commission.

#### **Gifts**

No gifts were received during this reporting period.

**FY 2021 Quarterly Order Activity**

<b>BANK</b>				
<b>Type of Action</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>4th</b>
Consent Order	1	1	0	
Cease & Desist	0	0	1	
Supervision	1	0	0	
Prohibition	0	1	1	
Total	2	2	2	
<b>TRUST COMPANY</b>				
Consent Order	0	0	0	
Cease & Desist	0	0	0	
Supervision	0	0	0	
Prohibition	0	0	0	
Total	0	0	0	
<b>MONEY SERVICES BUSINESS</b>				
Consent Order	7	5	0	
Cease & Desist	0	0	0	
Final Order After Hearing	0	0	0	
Total	7	5	0	
<b>PERPETUAL CARE CEMETERY</b>				
Consent Order	0	0	0	
Cease & Desist	0	0	0	
Refusal to Renew Cert/Auth	0	0	0	
Final Order after hearing	0	0	0	
Total	0	0	0	
<b>PREPAID FUNERAL CONTRACT</b>				
Consent Order	0	0	0	
Cease & Desist	0	0	1	
Total	0	0	1	

**Projected Future Rule Actions:**

***October 2021***

7 TAC Sec. 3.22 – Sale or Lease Agreements with Bank Insiders

7 TAC Sec. 17.3 – Sale or Lease Agreements with Trust Company Insiders

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